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Council Proceedings

Official Report

Bengal Legislative Council

Forty-seventh Session, 1935

25th to 29th November, 2nd to 7th and
9th to 12th December, 1935.

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GOVERNMENT OF BENGAL.

GOVERNOR OF BENGAL.

His Excellency the Right Hon'ble Sir JOHN ANDERSON, P.C., G.C.B., G.C.I.E.

MEMBERS OF THE EXECUTIVE COUNCIL.

The Hon'ble SIR JOHN WOODHEAD, K.C.S.I., C.I.E., in charge of the following portfolios:—

1. Finance
2. Separate Revenue.
3. Commerce and Industrial subjects.
4. Marine.
5. European Education.

The Hon'ble Mr. R. N. REID, C.S.I., C.I.E., in charge of the following portfolios:—

1. Appointment.
2. Political, excluding Haj Pilgrimage.
3. Police.
4. Ecclesiastical.
5. Regulation of medical and other professional qualifications and standards, subject to legislation by the Indian Legislature.
6. Jails.
7. Hazaribagh Reformatory School.

The Hon'ble Sir Brojendra Lal Mitter, K.C.S.I., in charge of the following portfolios:—

1. Land Revenue.
2. Land Acquisition.
3. Excluded Areas.
4. Judicial.
5. Legislative.

The Hon'ble Khwaja Sir Nazimuddin, K.C.I.E., in charge of the following portfolios:—

1. Emigration.
2. Immigration.
3. Jurisdiction.
4. Haj Pilgrimage.
5. Forests.
6. Irrigation.

MINISTERS.

The Hon'ble Nawab K. G. M. Faroqui, Khan Bahadur, in charge of the following portfolios:—

1. Agriculture and Industries (excluding Excise).
2. Public Works.

The Hon'ble Sir Bijoy Prasad Singh Roy, in charge of the following portfolios:—

1. Local Self-Government.
2. Excise.

The Hon'ble Khan Bahadur M. Azizul Haque, in charge of the following portfolios:—

1. Education.
2. Registration.
3. Wakf.

PRINCIPAL OFFICERS OF THE BENGAL LEGISLATIVE COUNCIL.

PRESIDENT.

The Hon'ble Raja Sir MANMATHA NATH RAY CHOWDHURY, of Santosh.

DEPUTY PRESIDENT.

MR. RAZAUR RAHMAN KHAN, B.L.

Secretary to the Council—MR. J. W. McKAY, I.S.O.

Assistant Secretary to the Council—MR. K. ALI AFZAL, Bar.-at-Law.

Panel of Chairmen for the Forty-seventh Session.

1. MR. W. H. THOMPSON.
2. Khan Bahadur MUHAMMAD ABDUL MOMIN.
3. MR. NARENDRA KUMAR BASU.
4. Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur.

BENGAL LEGISLATIVE COUNCIL.

ALPHABETICAL LIST OF MEMBERS.

A

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur. [Dacca City (Muhammadan).]
Ahmed, Khan Bahadur Maulvi Emaduddin. [Rajshahi South (Muhammadan).]
Ali, Maulvi Hassan. [Dinajpur (Muhammadan).]
Ali, Maulvi Syed Nausher. [Jessore South (Muhammadan).]
Armstrong, Mr. W. L. [Presidency and Burdwan (European).]

B

Baksh, Maulvi Shaikh Rahim. [Hooghly *cum* Howrah Municipal (Muhammadan).]
Baksh, Maulvi Syed Majid. [Jessore North (Muhammadan).]
Bal, Babu Lalit Kumar. [Bakarganj South (Non-Muhammadan).]
Bal, Rai Bahadur Sarat Chandra. [Faridpur South (Non-Muhammadan).]
Ballabh, Rai Bahadur Debendra Nath. [24-Parganas Rural North (Non-Muhammadan).]
Banerji, Rai Bahadur Keshab Chandra. [Dacca Rural (Non-Muhammadan).]
Banerji, Mr. P. [24-Parganas Rural South (Non-Muhammadan).]
Bannerjee, Babu Jitendralal. [Birbhum (Non-Muhammadan).]
Barma, Babu Premhari. [Dinajpur (Non-Muhammadan).]
Basir Uddin, Khan Sahib Maulvi Mohammed. [Rajshahi North (Muhammadan).]
Basu, Babu Jatindra Nath. [Calcutta North (Non-Muhammadan).]
Basu, Mr. Narendra Kumar. [Nadia (Non-Muhammadan).]
Basu, Mr. S. (Nominated Official.)
Bose, Mr. S. M., Bar.-at-Law. [Calcutta East (Non-Muhammadan).]

C

Chanda, Mr. Apurva Kumar. (Nominated Official.)
Chatterjee, Mr. B. C., Bar.-at-Law. [Bakarganj North (Non-Muhammadan).]
Chaudhuri, Khan Bahadur Maulvi Hafizur Rahman. (Nominated Non-official.)
Chaudhuri, Dr. Jogendra Chandra. [Bogra *cum* Pabna (Non-Muhammadan).]
Chaudhuri, Babu Kishori Mohan. [Rajshahi (Non-Muhammadan).]
Chaudhuri, Maulvi Syed Osman Haider. [Tippera North (Muhammadan).]
Chokhany, Rai Bahadur Ram Dev. (Bengal Marwari Association.)
Chowdhury, Maulvi Abdul Ghani, B.L. [Dacca West Rural (Muhammadan).]
Chowdhury, Haji Badi Ahmed. [Chittagong South (Muhammadan).]
Choudhury, Maulvi Nural Absar. [Chittagong North (Muhammadan).]
Cohen, Mr. D. J. (Nominated Non-official.)
Cooper, Mr. C. G. (Indian Jute Mills Association.)

D

Das, Babu Guruprosad. (Nominated Non-official.)
Das, Rai Bahadur Kamini Kumar, M.B.E. [Chittagong (Non-Muhammadan).]
Das, Rai Bahadur Satyendra Kumar. [Dacca City (Non-Muhammadan).]
Dunlop, Mr. R. W. B. (Indian Tea Association.)
Dutt, Rai Bahadur Dr. Haridhan. [Calcutta Central (Non-Muhammadan).]

E

Eusufji, Maulvi Nur Rahman Khan. [Mymensingh South-West (Muhammadan).]

F

Faroqui, the Hon'ble Nawab K. G. M., of Ratanpur. [Minister.] [Tippera South (Muhammadan).]
Fazlullah, Maulvi Muhammad. [Noakhali West (Muhammadan).]
Ferguson, Mr. R. H. [Rajshahi (European).]

G

Ghose, Dr. Amulya Ratan. [Howrah Municipal (Non-Muhammadan).]
Ghose, Rai Bahadur Sasonka Comar, C.I.E. (Dacca University.)
Gilchrist, Mr. R. N., C.I.E. (Nominated Official.)
Gladding, Mr. D. (Nominated Official.)
Graham, Mr. H., C.I.E. (Nominated Official.)
Guha, Babu Profulla Kumar. [24-Parganas Municipal North (Non-Muhammadan).]
Guha, Mr. P. N. (Nominated Non-official.)
Gupta, Mr. J. N., C.I.E., M.B.E. [Bankura West (Non-Muhammadan).]
Guthrie, Mr. F. C. [Presidency and Burdwan (European.)]

H

Hakim, Maulvi Abdul. [Mymensingh Central (Muhammadan).]
Haldar, Mr. S. K. (Nominated Official.)
Haque, the Hon'ble Khan Bahadur M. Azizul. [Minister.] [Nadia (Muhammadan).]
Hogg, Mr. G. P., C.I.E. (Nominated Official.)
Homan, Mr F. T. (Bengal Chamber of Commerce.)
Hooper, Mr. G. G. (Nominated Official.)
Hoque, Kazi Emdadul. [Rangpur East (Muhammadan).]
Hosain, Nawab Musharruf, Khan Bahadur. [Malda *cum* Jalpaiguri (Muhammadan).]
Hossain, Maulvi Muhammad. [Bakarganj North (Muhammadan).]
Hussain, Maulvi Latafat. (Nominated Non-official.)

K

Karim, Maulvi Abdul. [Burdwan Division South (Muhammadan).]
Kasem, Maulvi Abul. [Burdwan Division North (Muhammadan).]
Khan, Khan Bahadur Maulvi Muazzam Ali. [Pabna (Muhammadan).]
Khan, Maulvi Abi Abdulla. [Bakarganj South (Muhammadan).]
Khan, Khan Bahadur Hashem Ali. [Bakarganj West (Muhammadan).]
*Khan, Mr. Razaur Rahman, B.L. [Dacca East Rural (Muhammadan).]
Khan, Maulvi Tamizuddin. [Faridpur South (Muhammadan).]

L

Lamb, Mr. T. (Bengal Chamber of Commerce.)
Law, Mr. Surendra Nath. (Bengal National Chamber of Commerce.)
Leeson, Mr. G. W. (Bengal Chamber of Commerce.)

*Deputy President, Bengal Legislative Council.

M

Maguire, Mr. L. T. (Anglo-Indian.)
Maiti, Mr. R. [Midnapore South (Non-Muhammadan).]
McCluskie, Mr. E. T. (Anglo-Indian.)
Martin, Mr. O. M. (Nominated Official.)
Miller, Mr. C. C. (Bengal Chamber of Commerce.)
Mitter, Mr. S. C. (Nominated Official.)
Mitter, the Hon'ble Sir Brojendra Lal, K.C.S.I. (Member, Executive Council.)
Mittra, Babu Sarat Chandra. [24-Parganas Rural Central (Non-Muhammadan).]
Momin, Khan Bahadur Muhammad Abdul, C.I.E. [Noakhali East (Muhammadan).]
Mookerjee, Mr. Syamaprosad, Bar.-at-Law. (Calcutta University.)
Mukherji, Rai Bahadur Satish Chandra. [Hooghly Rural (Non-Muhammadan).]
Mukhopadhaya, Rai Sahib Sarat Chandra. [Midnapore South-East (Non-Muhammadan).]
Mullick, Mr. Mukunda Behary (Nominated Non-official.)

N

Nag, Reverend B. A (Nominated Non-official.)
Nag, Babu Suk Lal [Khulna (Non-Muhammadan).]
Nandy, Maharaja Sris Chandra, of Kasimbazar. (Bengal National Chamber of Commerce.)
Nazimuddin, the Hon'ble Khwaja Sir, K.C.I.E. (Member, Executive Council.)
Norton, Mr. H. R. (Calcutta Trades Association.)

P

Paul, Sir Hari Sanker, KT. [Calcutta South (Non-Muhammadan).]
Poddar, Mr. Ananda Mohan. (Bengal Mahajan Sabha.)
Poddar, Seth Hunuman Prosad. [Calcutta West (Non-Muhammadan).]
Porter, Mr. A. E. (Nominated Official.)

Q

Quasem, Maulvi Abul. [Khulna (Muhammadan).]

R

Raheem, Mr. A., C.I.E. [Calcutta North (Muhammadan).]
Rahaman, Mr. A. F. [Rangpur West (Muhammadan).]
Rahman, Khan Bahadur A. F. M. Abdur-. [24-Parganas Rural (Muhammadan).]
Rahman, Maulvi Azizur. [Mymensingh North-West (Muhammadan).]
Raikat, Mr. Prosanna Deb. [Jalpaiguri (Non-Muhammadan).]
Rai Mahasai, Munindra Deb. [Hooghly Municipal (Non-Muhammadan).]
Ray, Babu Amulyadhun. [Jessore South (Non-Muhammadan).]
Ray, Babu Khetter Mohan. [Tippera (Non-Muhammadan).]
Ray, Babu Nagendra Narayan, B.L. [Rangpur East (Non-Muhammadan).]
Ray, Mr. Shanti Shekhareswar, M.A. [Malda (Non-Muhammadan).]
Ray, Kumar Shib Shekhareswar (Rajshahi Landholders.)
*Ray Chowdhury, the Hon'ble Raja Sir Manmatha Nath, of Santosh. (Dacca Landholders.)
Ray Chowdhury, Mr. K. C. (Nominated Non-official.)
Ray Chowdhury, Babu Satish Chandra. [Mymensingh East (Non-(Muhammadan)]
Reid, the Hon'ble Mr. R. N., C.S.I., C.I.E. (Member, Executive Council.)
Ross, Mr. J. B (Indian Mining Association.)
Rout, Babu Hoseni [Midnapore North (Non-Muhammadan).]
Roxburgh, Mr. T. J. Y., C.I.E. (Nominated Official.)
Roy, the Hon'ble Sir Bijoy Prasad Singh. [Minister.] [Burdwan South (Non-Muhammadan).]
Roy, Babu Haribansa. [Howrah Rural (Non-Muhammadan).]
Roy, Babu Jitendra Nath. [Jessore North (Non-Muhammadan).]
Roy, Mr. Saileswar Singh. [Burdwan North (Non-Muhammadan).]
Roy, Mr. Sarat Kumar. (Presidency Landholders.)
Roy Choudhuri, Babu Hem Chandra. [Noakhali (Non-Muhammadan).]

S

Saadatullah, Maulvi Muhammad. [24-Parganas Municipal (Muhammadan).]
Sachse, Mr. F. A., C.I.E. (Nominated Expert.)
Sahana, Rai Bahadur Satya Kinkar. [Bankura East (Non-Muhammadan).]
Samad, Maulvi Abdus. [Murshidabad (Muhammadan).]
Sen, Rai Sahib Akshoy Kumar. [Faridpur North (Non-Muhammadan).]

*President of the Bengal Legislative Council.

Sen, Rai Bahadur Gris Chandra. (Expert, Nominated.)
Sen, Rai Bahadur Jogesh Chandra. [24-Parganas Municipal South (Non-Muhammadan).]
Sen Gupta. Dr. Naresh Chandra. [Mymensingh West (Non-Muhammadan).]
Shah, Maulvi Abdul Hamid. [Mymensingh East (Muhammadan).]
Singh, Srijut Taj Bahadur. [Murshidabad (Non-Muhammadan).]
Singha, Babu Kshetra Nath. [Rangpur West (Non-Muhammadan).]
Singha, Mr. Arun Chandra. (Chittagong Landholders.)
Sinha, Raja Bahadur Bhupendra Narayan, of Nashipur. (Burdwan Landholders.)
Sircar, Dr. Sir Nilratan, KT., M.D. [Calcutta South (Non-Muhammadan).]
Solaiman, Maulvi Muhammad. [Barrackpore Municipal (Muhammadan).]
Steven, Mr. J. W. R. [Dacca and Chittagong (European).]
Stevens, Mr. H. S. E. (Nominated Official.)
Suhrawardy, Mr. H. S. [Calcutta South (Muhammadan).]

T

Tarafder, Maulvi Rajib Uddin. [Bogra (Muhammadan).]
Thompson, Mr. W. H. (Bengal Chamber of Commerce.)
Townend, Mr. H. P. V. (Nominated Official.)

W

Walker, Mr. J. R. (Indian Jute Mills Association.)
Woodhead, the Hon'ble Sir John, K.C.S.I., C.I.E. (Member, Executive Council.)
Wordsworth, Mr. W. C. (Bengal Chamber of Commerce.)

THE BENGAL LEGISLATIVE COUNCIL PROCEEDINGS

(Official Report of the Forty-seventh Session.)

Volume XLVII—No. 1.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Monday, the 25th November 1935, at 3 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHOWDHURY, of Santosh) in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers and 84 nominated and elected members.

Oath or affirmation of allegiance.

The following members made an oath or affirmation of allegiance to the Crown:—

Mr Harold Graham, C.I.E., I.C.S.,
Mr. A. E. Porter, I.C.S.,
Mr. R. W. B. Dunlop, I.C.S.,
Mr. O. M. Martin, I.C.S.,
Babu Kshetra Nath Singha, and
Mr. F. A. Sachse, C.S.I., C.I.E., I.C.S.

Panel of Chairmen.

Mr. PRESIDENT: In accordance with the provisions of rule 3 of the Bengal Legislative Council Rules, 1920, I nominate the following members of the Council to form a panel of four Chairmen for the ensuing Session:—

(1) Mr. W. H. Thompson,
(2) Khan Bahadur Muhammad Abdul Momin, C.I.E.,
(3) Mr. Narendra Kumar Basu, and
(4) Raja Bahadur Bhupendra Narayan Sinha, of Nashipur.

Unless otherwise arranged, the senior member among them present in the above order will preside over the deliberations of this Council in my absence and in the absence of the Deputy President.

Message from the Governor.

Mr. PRESIDENT: Gentlemen of the Council, with your permission I shall read a letter received by me in reply to the message of congratulations and good wishes from this Council to the Right Hon'ble the Marquis of Zetland on the assumption of his office of Secretary of State for India, as expressed in this Council on the 29th July last:—

Government House,

Calcutta:

The 6th September 1935.

"Dear Mr. President,

I am desired by the Right Hon'ble the Marquis of Zetland, Secretary of State for India, to say that he has received with great pleasure the excerpt from the Proceedings of the Bengal Legislative Council, dated the 29th July, 1935, which you sent me with your demi-official letter No. 3031 L.C., dated the 31st July, 1935.

He also asks me to convey to you, and through you to the members of the Legislative Council, his very real appreciation of their expression of good will on his appointment as Secretary of State for India and the assurance of his continued remembrance of the happy relations which existed between him and the Legislature during the period of his Governorship of the Presidency.

Yours sincerely,

(Sd.) John Anderson."

Obituary Reference.

Mr. PRESIDENT: Gentlemen of the Council, since the Council last met we have had to record the death of four present and past members of this Council—

(1) Members will recollect that Rai Sahib Panchanan Barma, M.B.E., attended for the first few days of the last Session when he was taken ill and was admitted into the Medical College Hospital, Calcutta, where he breathed his last on the 9th September last. The late Rai Sahib was a member of this Council from the very inception of the present Reforms in 1921 and continued till 1926. He was again returned in 1929 and continued as a member till the day of his death. He was a member of the Rangpur District Board, and a Commissioner of the Rangpur Municipality and also a member of the Board of Economic Inquiry, Bengal. He endeared himself to all those who came in contact with him by his unassuming manners and amiable disposition. He was the popular leader of the Kshatriya community of North

Bengal and Assam. During the Great War the late Rai Sahib recruited a large force for the Bengalee regiment. His public services were recognised by Government in 1919 by the conferment on him of the title of Rai Sahib and M.B.E.

(2) The death took place in London on September 22nd last of Major Norman McLeod, V.D. He was a member of this Council from 1909 to 1914. The late Major McLeod was a partner of the firm of Messrs. McLeod and Co. He was on the Committee of the Bengal Chamber of Commerce for a number of terms and a member of the Hardinge Bridge Commission and the Royal Company of Archers. He was a first member and afterwards the Captain of the Royal Golf Club. The late Major took a very keen interest in the sporting affairs of the city. He was long connected with the Calcutta Light Horse and his deep interest in the corps was signalised by his presentation of the McLeod Cup for inter-troop competition. On his retirement from India in 1914 the late Major saw active service in France during the last European war.

(3) Dr. J. N. Maitra, the popular eye specialist of Calcutta, died on the 7th ultimo at the comparatively early age of 55. The late doctor was a member of this Council from 1921 to 1923 and a Councillor of the Calcutta Corporation from 1926 till his death. The great interest he took in the civic administration of the city is too well known to need enumeration here. He was also a member of the Senate of the Calcutta University. By his untimely death Calcutta has lost one of her best eye-doctors and Bengal a sincere worker.

(4) Last we have to mourn the death of Mr. Ananda Chandra Roy of Dacca at the ripe old age of 92, which melancholy event took place at Dacca on the 26th of the last month. He was the right-hand man of the late Sir Surendra Nath Banerjea when the agitation over the partition of Bengal was at its height. He was elected a member of the Bengal Legislative Council after the annulment of the partition in the years 1913 and 1914. In his legal profession he reached the very peak of success. He was the first Chairman of the Dacca Municipality after the passing of the Bengal Municipal Act and rendered valuable service towards the improvement of the civic administration of Dacca city. He was a striking personality and his death is deeply mourned in Bengal. May he rest in peace?

I am sure, gentlemen, it is your wish that a message of this Council's sympathy should be communicated to the bereaved families. I would, therefore, ask you to signify your approval by kindly rising in your places.

(Pause.)

Mr. PRESIDENT: Thank you, gentlemen. The Secretary will please take the usual steps.

STARRED QUESTIONS

(to which oral answers were given)

Retirement of officers.

*1. **Maulvi MUHAMMAD FAZLULLAH:** (*a*) Is the Hon'ble Member in charge of the Appointment Department aware—

(*i*) that there is a good deal of unemployment among young educated Bengali youths; and

(*ii*) that this is causing great hardship and consequent discontentment amongst them?

(*b*) Are the Government considering the desirability of stopping the system of extension of service beyond 55 years of age?

(*c*) Will the Hon'ble Member be pleased to lay on the table a statement showing, department by department, the number of incumbents of services under the Government of Bengal to whom extension of service has been given beyond 55 years of age during the last 5 years including the present year?

(*d*) Is it a fact there are certain departments in the Secretariat where as many as five extensions of service have been granted to individual Government servants during the last five years including the present year?

(*e*) If the answer to (*d*) is in the affirmative, will the Hon'ble Member be pleased to name the department or departments where such long extensions of service have been granted and to state the reasons for such extensions?

(*f*) Are the Government considering the desirability of taking steps for the discontinuance of the practice of granting extension of service to Government servants who have attained 55 years of age?

MEMBER in charge of APPOINTMENT DEPARTMENT (the Hon'ble Mr. R. N. Reid): (*a*) (*i*) and (*ii*) Yes.

(*b*) to (*f*) The existing rule regarding retirement of officers is Fundamental Rule 56 (*a*) and (*b*) which is reproduced below:—

FUNDAMENTAL RULES.

Chapter IX—Compulsory Retirement.

"56. (*a*) Except as otherwise provided in this rule, a Government servant, other than a ministerial servant, is required to retire on attaining the age of 55 years. He may be retained in service after

that age with the sanction of the local Government on public grounds, which must be recorded in writing; but he must not be retained after the age of 60 years except in very special circumstances.

(*b*) A ministerial servant may be required to retire at any time after attaining the age of 55 years, and may not in any case be retained in service after attaining the age of 60 years except in very special circumstances, which must be recorded in writing, and with the sanction of the local Government."

Rule 56 (*a*) is strictly enforced and very few exceptions are made. Retention of ministerial officers beyond the age of 55 is not uncommon but Government do not see any reason to revise the existing rule.

Kazi EMDADUL HOQUE: With reference to clause (*a*), will the Hon'ble Member be pleased to say what is meant by "public grounds"?

The Hon'ble Mr. R. N. REID: The public advantage, Sir.

Kazi EMDADUL HOQUE: Will the Hon'ble Member be pleased to state how many officers have been retained after the completion of 60 years, referred to in clause (*a*), under special circumstances?

The Hon'ble Mr. R. N. REID: I cannot answer that without notice, Sir.

Detenu Khitish Chandra Roy Chowdhury, of Noakhali.

*2. **Maulvi MUHAMMAD FAZLULLAH:** (*a*) Is the Hon'ble Member in charge of the Political Department aware that Babu Khitish Chandra Roy Chowdhury, Editor, *Desh Bani*, of Noakhali, a detenu under the Bengal Criminal Law Amendment Act, was not permitted to see his old mother on her death bed or to attend the *sradh* ceremony which took place at the Noakhali town only a few months ago?

(*b*) Is it also a fact that the said Khitish Babu is not being permitted to see his old father of nearly 100 years of age who has lost his eye-sight and is nearing his end due to old age?

(*c*) Do the Government contemplate the release of the detenu in the near future? If not, why not?

MEMBER in charge of POLITICAL DEPARTMENT (the Hon'ble Mr. R. N. Reid): (*a*) Yes.

(*b*) No.

(*c*) The reply is in the negative. The reason is that Government do not consider that he can be released with safety at present.

Kazi EMDADUL HOQUE: Will the Hon'ble Member be pleased to state whether on any previous occasion facility was given to a detenu to see his relations in sick-bed?

The Hon'ble Mr. R. N. REID: That has been done, Sir.

Kazi EMDADUL HOQUE: Why then a distinction was made in this case by withholding that privilege?

The Hon'ble Mr. R. N. REID: I have given the reply, Sir, in the printed answer.

Two female convicts Miss Santi Chose and Miss Suniti Chaudhury.

***3. Maulvi MUHAMMAD FAZLULLAH:** (*a*) Will the Hon'ble Member in charge of the Political Department be pleased to state the present state of health of Miss Santi Ghose who is now undergoing imprisonment at the Hijli Jail?

(*b*) Is it a fact that she has lost 17 pounds in weight?

(*c*) Will the Hon'ble Member be pleased to state—

(*i*) what was her weight when she entered jail;

(*ii*) what is her present weight; and

(*iii*) whether she has got any other associate in the jail?

(*d*) Will the Hon'ble Member be pleased to state the present condition of health of Miss Suniti Chaudhury now undergoing imprisonment in the Dacca Jail?

(*e*) Is it a fact that she has been getting slow fever every day for the last two weeks?

(*f*) Will the Hon'ble Member be pleased to state—

(*i*) what was her weight when she entered the jail; and

(*ii*) what is her present weight?

(*g*) Is it a fact that she has been classed "C"?

(*h*) Is the Hon'ble Member aware that she comes of a respectable family and is an educated girl?

(*i*) Is it a fact that she has been kept with ordinary convicts?

(*j*) Will the Hon'ble Member be pleased to state why she has been separated from Miss Santi Ghose with whom she was kept formerly?

The Hon'ble Mr. R. N. REID: (*a*) Good.

(*b*) No.

(*c*) (*i*) 107 lbs.

(*ii*) 112 lbs.

(*iii*) Yes.

(*d*) Good.

(*e*) No.

(*f*) (*i*) 96 lbs.

(*ii*) 107 lbs.

(*g*) Yes.

(*h*) She is the daugter of a retired clerk whose pension was reported to be Rs. 40 per mensem. She was reading in class VIII.

(*i*) She has been kept with another prisoner of her class.

(*j*) Santi Ghose is a Division II prisoner and the rules require that she should be kept separate from Division III prisoners.

GOVERNMENT BUSINESS

LEGISLATIVE BUSINESS

GOVERNMENT BILLS.

The Bengal Wakf (Amendment) Bill, 1935.

The Hon'ble Khan Bahadur M Azizul Haque introduced a Bill to amend the Bengal Wakf Act, 1934.

The Secretary then read the short title of the Bill.

The Court-fees (Bengal Third Amendment) Bill, 1935.

The Hon'ble Sir Brojendra Lal Mitter introduced a Bill to amend the Court-fees (Bengal Amendment) Act, 1935.

The Calcutta Municipal (Second Amendment) Bill, 1935.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I beg to move for leave to introduce a Bill further to amend the Calcutta Municipal Act, 1923.

The motion was put and agreed to.

The Secretary then read the short title of the Bill.

The Bengal Land Registration (Amendment) Bill, 1935.

The Hon'ble Sir Brojendra Lal Mitter introduced a Bill further to amend the Land Registration Act, 1876.

The Secretary then read the short title of the Bill.

The Bengal Court of Wards (Amendment) Bill, 1935.

The Hon'ble Sir BROJENDRA LAL MITTER: Sir, I beg to move that the Bengal Court of Wards (Amendment) Bill, 1935, be referred to a Select Committee consisting of—

(1) Mr. W. H. Thompson,
(2) Babu Jatindra Nath Basu,
(3) Babu Sarat Chandra Mittra,
(4) Mr. Narendra Kumar Basu,
(5) Babu Satish Chandra Ray Chowdhury,
(6) Rai Bahadur Akshoy Kumar Sen,
(7) Babu Khetter Mohan Ray,
(8) Raja Bahadur Bhupendra Narayan Sinha, of Nashipur,
(9) Rai Bahadur Keshab Chandra Banerji,
(10) Mr. Mukunda Behary Mullick,
(11) Mr. A. Raheem, C.I.E.,
(12) Maulvi Abul Quasem,
(13) Khan Bahadur Muhammad Abdul Momin, C.I.E.,
(14) Maulvi Abdus Samad,
(15) Mr. O. M. Martin,
(16) Mr. F. A. Sachse, C.S.I., C.I.E.,
(17) Mr. G. G. Hooper,
(18) Mr. Ananda Mohan Poddar,
(19) Haji Badi Ahmed Chowdhury, and
(20) the mover,

with instruction to submit their report as soon as possible and that the number of members whose presence shall be necessary to constitute a quorum shall be five.

Hon'ble members have seen from the Statement of Objects and Reasons that the Court of Wards Act has been amended from time to time according as necessity arose. Members are aware that the Court of Wards Act is designed for the purpose of allowing the State to manage

the properties of certain classes of disqualified proprietors who are unable to manage their properties themselves. The Act contemplates five classes of disqualified proprietors in section 6. It will be seen that in some cases the disqualification arises from non-age, in some cases from sex, in some cases from mental deficiency, and in other cases from the incapacity of proprietors to manage their estates themselves. In the management of these estates, and a large number of estates is now being managed by the Court of Wards, the effect of the worldwide economic depression has been felt. Many estates have been hard hit. In this Council, we frequently hear that the cultivator has been hit by low prices and he is not able to pay his rent. In consequence of that, the *zemindar* is in difficulties also, unless he has got a reserve to pay his revenue and cesses and to meet his other liabilities. In order to save his property, it is inevitable that he should go to the bank at times. In this way, we find that a large number of estates in charge of the Court of Wards has been involved in debt. The object of the Court of Wards, Sir, is not to liquidate the estate in the quickest possible time, but to preserve it so that the creditor may be paid his dues, and something may be saved out of the wreckage for the proprietor This object the Court of Wards always keeps in view. It is easy, when an estate comes to the Court of Wards, to sell it up to the highest bidder, but that is not the object with which the Court of Wards takes charge of an estate. As I have already said, the primary object is to preserve the estate for the benefit of the creditor as also for the benefit of the proprietor In these days of depression, we find that the Court of Wards cannot discharge its duties with this object in view unless some changes in the law are made. Sir, I shall illustrate this by way of an example Suppose there are both secured and unsecured debts of an estate. The Court of Wards takes charge of the estate, makes an estimate of the probable income, the probable expenditure and prepares a scheme for the liquidation of the debts. The scheme works well in normal times, but at a time of depression, it is not always possible to follow the scheme and work it out smoothly. In some cases an unsecured creditor, who has a decree, goes and executes his decree, notwithstanding the fact that the Court of Wards is in charge of the estate, and that there is no risk of the property being dissipated. He goes and executes the decree and brings the property to sale. The result is that the whole scheme prepared by the Court of Wards is upset, and then nothing can be done according to it. All the creditors suffer, the proprietor suffers and it does no good to anybody concerned, except perhaps that individual creditor who has gone to court. If we can prevent that, when an estate runs no risk of being dissipated, the capital assets being preserved, then it will ultimately be to the benefit of everybody concerned. My proposal, therefore, is that after the Court of Wards takes charge of a property, there should be no execution of any decree for a period of five years. During these five years, the

creditors will be paid interest at the rate of 4½ per cent. The advantage of that course is that so long as the Court of Wards is in charge of the estate, the capital assets are there, and the property will not be sold when the market is low. But inasmuch as a right of the creditor is being taken away by this proposal, and he cannot execute his decree, he will be given some interest as a compensation. It may not be the contractual interest, but at any rate it will be something more than the bank rate. In this way, he gets something, everybody gets something, and the assets are also preserved. Sir, that is one of the proposals in this Bill.

I need not go into all the proposals contained in the Bill, but I would refer to the main proposals. When granting allowance to the proprietor, under the existing law, it has to be fixed only in consideration of the rank and position of the proprietor without any reference to the financial condition of the estate. Originally, when the Court of Wards Act was passed, disqualified proprietors consisted only of minors, females and mentally deficient people, and the measure of allowance was the rank and needs of the proprietors. But subsequently, many years afterwards, another category of disqualified proprietors was added, that is, those who on their own application were declared by the Court of Wards as disqualified, and when the Court of Wards thought that in the public interest their estates should be managed by the Court of Wards. When this amendment was made, no change was made in the provision for allowances. In actual practice it appeared that a person might by reason of his rank and position be entitled to a big allowance which his estate could not afford. In such cases it is unfair to the creditor that the proprietor should get a big allowance and the creditor may be delayed if not defeated in the end. Therefore, the proposal in the Bill is that, in fixing the allowance, the Court of Wards should take into account not only the rank of the proprietor but also the financial condition of the estate.

The next important proposal, Sir, is the provision with regard to the distribution of the income. In the existing law certain classes of liabilities are mentioned in a certain order. In practice, however, it has been found that that order needs modification. Although under the existing law the Court of Wards has the power to modify that order of distribution, nevertheless it is more satisfactory if, instead of leaving the matter to the discretion of the Court of Wards, provision be made in the Act for a more logical order of distribution. That is our third proposal. It may be that some members will hold a different view from what is in the Bill, but that is a matter of detail which can be discussed in the Select Committee.

The next important point with which the Bill deals is the position of the estate when the Court of Wards finds that it cannot continue to manage the estate for the purpose for which it assumed charge, that is

to say, when it withdraws from the charge or, in other words, the Court of Wards releases the estate. The existing provision of the law is that when an estate is released, the Collector may attach the estate and recover sufficient amount of money for the payment of—I should say for the sake of brevity—Government dues, and then the estate is thrown to the creditors who scramble for their dues and the most vigilant get the lion's share of it. That is an unsatisfactory state of things. I will assume that there are, say, half-a-dozen unsecured creditors and one of them attached the estate; the others gave time to the proprietor or for some reason or other did not choose to get a decree; the man who attaches gets his amount in full, whereas the other creditors who have been generous to the proprietor, or showed forbearance, stand to lose. Suppose out of the six, three attach the properties and when the properties are brought to sale there are three attachments pending; in that case the sale proceeds will go to the three only; if the sale proceeds be not enough they will get *pro rata*, but the others will not get anything. That is an unsatisfactory state of things, and it has been suggested that we should make some provision that on release the estate should be preserved so that all the creditors may get their dues according to their rights. If anything is left over, it naturally goes to the proprietor. What has been suggested is that some provision should be made by which no unfair advantage may be taken by any one creditor to the prejudice of the other creditors. This is a matter, Sir, on which various proposals have been made. The principle of preserving the estate for the benefit of all being accepted, the question as to how it can be worked out is a matter of detail which may very well be discussed in the Select Committee.

These, Sir, are the main proposals of the Bill. We have taken advantage of this occasion to correct some anomalies which have crept in. Again, some of the provisions are different in Western Bengal from those in Eastern Bengal. We have taken this opportunity to reconcile the differences as much as possible; and some drafting amendments have been proposed in the Bill. I have explained the main principles of the Bill and if the Council accepts them, the details may be discussed in the Select Committee.

I beg to move the motion which stands in my name.

Dr. AMULYA RATAN GHOSE: Sir, I beg to move, by way of amendment, that the Bill be circulated for the purpose of eliciting opinion thereon by the 28th February, 1936.

Mr. W. H. THOMPSON: Sir, I beg to move, by way of amendment, that the Bill be circulated for the purpose of eliciting opinion thereon by the 30th January, 1936.

Sir, when this Bill was introduced in this Council, it could not fail, in the case of most of us, to take our breath away. The extravagant character of its main provision, namely, a "moratorium" for five years, extending in certain circumstances to fifteen years, must have immediately struck the attention of those members of this House who belong to the legal profession. But, Sir, we were all born and brought up under the rule of law, and it could not fail to be a shock to us to find that there is to be one law for those who are fortunate enough to be taken over by the Court of Wards and another law for the rest of us. This, Sir, is the middle of the twentieth century and I believe that such a piece of legislation as this would not have the slightest hope of finding its way on to the statute book in any other country in the world but in India; and it seems wrong that at this time when India is about to take its place among the constitutionally-governed countries of the world that it should be introduced now. Though we in the European group do not like this Bill, we have done our best to look at it from Government's point of view. The Court of Wards' case seems to be something like this:—

"We have taken over a certain number of estates which we believe will be able to meet their obligations given sufficient time under our management. But we must have a free hand. If individual creditors obtain and execute decrees in the Civil Court, in an attempt to get their hands first on the assets at present available; if for example in execution of such decrees portions of the estate or even the balances in the Collector's hands are attached, then our management cannot go on. If this is liable to happen in the future, then we shall not be able to obtain the financial assistance in the form of funding loans which is necessary for our purposes and shall have to acknowledge defeat."

If the 103 estates which are at present under the Court of Wards can ultimately meet their obligations, then there is not much permanent harm done to the creditors. If ultimately every debt will be paid and if all that is required is patience on the part of creditors—then there is much to be said for the Bill.

I have put the Court of Wards case very briefly, and I think Sir Brojendra will agree with me that I have put it fairly. But he will notice and you, Sir, will notice that in order to put it like this I have had to use the word "if" not once but very many times.

Before I go further may I remind Sir Brojendra of one point? It is true that the last four or five years have been hard times for the landlords, but it is true also that the landlords have not been the only people who have been hit by the slump; their creditors have also suffered. In some cases it will not prove salvation to the creditors if their claims are met at the end of 15 years. Some of them have obligations of their own which they must meet or go under themselves.

Sir Brojendra's Bill will ruin some of them and will cause considerable inconvenience to a number of others. But, Sir, hard cases make bad law.

Let me go back now to the word "if". There, Sir, is the weakness of the Government's case, the assumption that every estate at present under the Court of Wards and every estate that will be taken under the Court of Wards in the future will be ultimately solvent. If in a particular case the assumption proves not to be true, then there will be permanent harm done to the creditors through the ward and the estate being maintained for a number of years out of the money which is really belonging to the creditors. Government is taking extraordinary powers to use against the creditors. It must accept due responsibility in the use of these powers, and such responsibility should be defined in the Act. When a creditor feels that his just claims are about to be defeated, he is debarred from going to the Civil Court and the Bill gives him no alternative assurance that he will receive fair treatment. Yet Government does not intend to do harm that can be avoided to any party and it could give much assurance to the creditors and to us by providing in the Bill for the responsibility of the Court towards the creditors. This Bill need not be nearly as one-sided as it appears if it were recast on these lines and the Act were to provide, as I think it should, for the Court of Wards to be trustee for the creditors as well as trustee for the ward.

The worst case of injustice arises—as Sir Brojendra has mentioned in meeting part of a point which he anticipated I would raise—when the Court of Wards holds an estate for a number of years and then at the end of that time finds that it cannot set it on its feet. But in all cases the Court should be required to ascertain and consult the interests of the creditors. There is nothing in the present Bill to indicate that the Court of Wards has that responsibility towards the creditors. The Bill for instance might well provide for periodical meetings of the creditors so that their views and wishes could be intimated to the Court for periodical reports and accounts to be issued for the information of creditors and for creditors to have some say in the question of how long the estate should remain under the Court of Wards. Such provisions would go a long way to reassure creditors and should, I think, be provided in the Act as a set off against the arbitrary new powers which the Act proposes to give the Court. Sir Brojendra has said just now that as a set off against these arbitrary powers it affords a guarantee that 4½ per cent. interest will be paid on secured debts. There is nothing whatever in the Act to suggest that 4½ per cent. is guaranteed. Government gives no such guarantee to anybody. If the money is there, it will be paid out, but Government cannot mortgage the revenue of Bengal for the purpose. There is nothing of the sort in the Act and I suggest, Sir, that Sir Brojendra has put us wrong in stating that

against these arbitrary powers, which Government asks for, it has afforded to the creditors any guarantee of 4½ per cent. or any guarantee whatsoever.

It is not safe, as things are to-day, to assume that the estates, which are now under the Court of Wards, will all be proved ultimately solvent. Nor is it safe to assume that the Government of the future will not be tempted to take under the Court estates which are definitely insolvent. The applicant to be taken under the Court of Wards has everything to gain; an end to all worry, a satisfactory allowance, the maintenance of his good name and reputation and immunity from all dues and nothing to lose. Applications will be very numerous and if such an estate is taken over and is found to be insolvent, as the Act is at present, the Court has no alternative but to give the estate back. The proprietor is no whit the worse than before it is taken over. The release of an encumbered estate is a very unsatisfactory conclusion to the Court's management. As Sir Brojendra has said, there is just a scramble amongst the creditors with the ward doing his best to cheat the lot of them. If an applicant to be taken under the Court of Wards knew from the beginning that if the Court could not set his estate on its feet it would not give it back to him, but instead would be obliged to undertake regular liquidation, then, Sir, there would be very many fewer applicants.

I have moved that the Bill be recirculated. I should like Government to withdraw it and redraft it, adding the necessary sections to place the Court definitely in the position of trustee on behalf of the creditors as well as on behalf of the ward and a whole chapter providing an insolvency procedure. I do not think it can be done by tinkering with the present Bill, or merely adding a section at the end of section 12, as proposed by Sir Brojendra, giving the Court the option instead of returning the estate to the proprietor to hand it over to the Civil Court to be placed in the hands of liquidators. Enough harm has been done to the creditors already, little enough is left to them; insolvency procedure in the Civil Court is a very expensive business and would eat up all that remains. The Court of Wards knows the creditors, knows their claims and could deal with them much more cheaply than a Civil Court.

There are other points in the Bill, points of principle, which must be considered before we commit it to a Select Committee, particularly clause 14, the clause which lays down the classification of priority according to which money realised on account of the estate shall be utilised. The repayment of capital debts is put practically last of all, though without this law the secured debts among them at least would take priority of everything except land revenue. These and other matters are points which require very careful consideration and the very fact that so few opinions have come in, indicates that more time is required. The opinions of the Bengal Chamber of Commerce and the

European Association have not been circulated. Certain banks have been put to considerable difficulties through the working of the Encumbered Estates Act in the United Provinces. Their opinions from that experience might save us from causing similar difficulties in this province. Credit is a very sensitive plant and credit is equally necessary to the Court of Wards and the *zemindars* of Bengal in general. I have put the 30th of January, Sir; I do not think that is too long, and I move my motion for recirculation.

Dr. NARESH CHANDRA SEN GUPTA: Sir, I have the rare pleasure of being able to support a motion of Mr. Thompson. Sir, in addition to what he has said, I wish to point out that this Bill requires very close examination for several other reasons. As Sir Brojendra has very lucidly pointed out, the bulk of the amendments proposed have been called for by reason of the fact that there are a large number of adult disqualified proprietors who have come and placed their estates under the Court of Wards. The proprietors are heavily involved in debts, and the Court of Wards is finding difficulty in dealing with their debts. That is a matter which requires closer attention. If these amendments are carried, it is possible that the Government will relax even the amount of care which it exercises now in taking over encumbered estates. My opinion is that too many estates have been taken over by the Court of Wards. There is no particular reason why persons who are otherwise quite capable of looking after their own estates, should be taken charge of by the Court of Wards simply because they happen to be *zemindars* and simply because they have run into debt. I believe we have gone past the stage of the Roman laws which provide for a Curator of Prodigals, and even if we had that office, even if Government contemplated converting the Court of Wards into a Curator of Prodigals, there ought to be a new institution altogether from the present Court of Wards and provision should be made to secure creditors and other people, such as is stated by Mr. Thompson. I have said before in this Council that I am opposed to this policy. There is no particular reason why a *zemindari* should be taken under the Court of Wards so liberally simply to enable Government revenue to run into arrears, and to deprive creditors from getting their ordinary relief in most cases in the Civil Courts, and for no other reason than just because a particular gentleman who has run into debt should be kept in comfort and relieved of liabilities. It is not because he is incapable, for some of them have been found to be quite fit to be in very responsible public office, but because he fears he will be taken to the Civil Courts and his estates taken away, that he is declared a disqualified proprietor.

Sir, this amending Bill requires careful consideration from that point. It threatens to enlarge the scope of the Court of Wards and bring in more *zemindars* under Government which I do not consider desirable.

Sir, as Mr. Thompson has pointed out, Sir Brojendra is not right in saying that the creditors are not affected by——

Mr. PRESIDENT: Order, order.

The melancholy news of the death of Khan Bahadur Alimuzzaman Chaudhuri has just been communicated to me. The Khan Bahadur died at 3-15 this afternoon at Didar Bux Lane, No. 8, and I think it will be the wish of the House that we should adjourn this meeting and meet to-morrow at 3 p.m.

Adjournment.

The Council was then adjourned till 3 p.m. on Tuesday, the 26th November, 1935, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Tuesday, the 26th November, 1935, at 3 p.m.

Present:

MR. President (the Hon'ble Raja SIR MANMATHA NATH RAY CHOWDHURY, of Santosh) in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers and 91 nominated and elected members.

Obituary Reference.

Mr. PRESIDENT: Gentlemen of the Council, we had to rise early yesterday on receipt of the sad news of the death at the age of 71 years of our colleague, Khan Bahadur Alimuzzaman Chaudhuri, C.I.E. The late Khan Bahadur was a member of the present Council from 1929 and was a member of the Indian Legislative Assembly from 1924 to 1926. He was a landholder and the Chairman of the Faridpur Municipality and of the Faridpur District Board with which he was connected for the last 40 years. He was also an Honorary Magistrate. The late Khan Bahadur was a very popular figure in the Faridpur district. In recognition of his public services Government made him a Khan Bahadur in 1925 and a C.I.E. this year. A man of sterling character, a good presence, yet gentle and unassuming, he was a popular Muhammadan leader. His loss will be keenly felt.

Gentlemen, it is our duty to send a message of deep sympathy to the members of his bereaved family. I would ask you to signify your assent by kindly rising in your places.

(Pause.)

Mr. PRESIDENT: Thank you, gentlemen. The Secretary will take the usual step.

GOVERNMENT BUSINESS

LEGISLATIVE BUSINESS

GOVERNMENT BILLS.

The Bengal Court of Wards (Amendment) Bill, 1935.

Dr. NARESH CHANDRA SEN GUPTA: Sir, yesterday I protested against this Bill because I am against the policy of Government in constituting itself in an everincreasing measure as a sort of a curator prodigalis. In the next place, I would draw the attention of the House to the fact that while Government are asking for powers to have a free hand in dealing with the estates of wards to the detriment of the creditors, there is no assurance that they are setting their own house in order. The Court of Wards Act does have a moratorium row. They are given a year's time in which they can arrange their affairs. Normally a year's time ought to be enough for them to enable them to know the position of the estate, to work out a scheme according to the provisions of the Court of Wards Act; and if a reasonable scheme is put forward, I do not think that the creditors will be so unreasonable as not to accept it. As a matter of fact, the Court of Wards have of recent years lost its old reputation for efficiency. I have known of cases in which by sheer neglect things have been allowed to drift——.

Mr. PRESIDENT: It appears that you are discussing the principles of the Bill at this stage. I am afraid you cannot do that, nor is it necessary for your present purpose to go into the principles of the Bill.

Dr. NARESH CHANDRA SEN GUPTA: Quite so, Sir. The Bill proposes to extend the moratorium to five years. The administration of the Court of Wards has been so conducted that with one year's moratorium they are not able to deal with matters concerning the estate, and not only is there no assurance of that, there are reasons to think that it has not been given. I was referring to a particular case, but I would refrain from that.

Mr. Thompson has referred to a number of "if"s upon which the position of Government is based. There is another big "if"—if the estate is efficiently administered. What I would submit is that there is no guarantee that the Court of Wards will deal efficiently and diligently with the affairs of the ward in the interest of the creditors. Sir, Sir Brojendra has made a statement in this connection which, I

am afraid, is not correct. He says that if the moratorium is granted to the Court of Wards, the security of the creditors would not be impaired. I am sorry to say that Sir Brojendra must have forgotten that a security may be impaired by mere lapse of time. Five years in the case of an estate which is in a more or less hopelessly embarrassed position might mean that the debts on which the interest would run would come to a figure for which the estate would not be an adequate security. What guarantee is there that by mere lapse of time the security would not become inadequate? I think that that is a matter which probably escaped the notice of the Hon'ble Member.

There is another thing to which the Hon'ble Member has omitted to refer, and that is the complete immunity given to everybody doing anything under the Act. No Court shall pass a decree against any person in respect of anything done in good faith under this Act. If this "good faith" could be interpreted to mean, as it does mean under the Indian Penal Code, that a thing which is saved by this provision is a thing done with due care and caution, possibly there might be room to support this proposal, but "good faith" does not necessarily imply care and caution. If a man has negligently caused an injury in the performance of the duties he has to perform under the Court of Wards Act, he will no longer be liable to be sued in a Court of law. Although by such negligence he might have destroyed the estate of the ward, he might have destroyed the security of the creditors, and he might have ruined the creditors and debtor alike, he would be absolutely immune only if he proves that he acted honestly. Honestly is not the only thing that is required. This only indicates that all is not well with this Bill, that the Bill is not such a simple and bona fide measure as Sir Brojendra would have us believe. There has recently been litigation which has been somewhat embarrassing to the Court of Wards and which, I am sure, has been at the root of this extraordinary provision. This immunity extends not merely to the managers of the Court of Wards, but to the meanest *peada* under the Court of Wards. This immunity protects the managers, *naibs*, *gomastas* and everybody from suits being filed against them. I wonder if the position has been properly appreciated.

Lastly, Sir, I am opposed to this Bill because it is not a comprehensive Bill. Sir Brojendra Mitter has referred to certain anomalies —anomalies owing to the diversity of the provisions in East Bengal and West Bengal. There is no reason whatsoever that differences should exist in the administration by the same Court of Wards of estates in East Bengal and West Bengal. The accident of history which brought about that difference no longer exists, and when we are undertaking legislation for the amendment of the Act, I should have thought that Government had taken this opportunity of removing the anomaly and bringing the entire law into unanimity. That

has not been done. Besides that, Sir, there are several other anomalies in the Court of Wards Act which require action to be taken. It would not do, I say, Sir, to come forward before this Council with hasty measures directed towards meeting some of the evils or inconveniences which the Court of Wards has felt in recent times and without a thorough consideration of the whole measure. If Government really want that the Court of Wards should be administered in the interest of the wards in a manner different from that in which they have been administering it, if they want more powers and more immunities, if they want the whole thing to be reshuffled, I think the proper course would be to have the Court of Wards Act examined very thoroughly and then to come forward with a comprehensive measure which would give in a comprehensive Bill the entire policy of Government.

Babu SATISH CHANDRA RAY CHOWDHURY: Sir, while I am at one with Dr. Sen Gupta that the scope of the Court of Wards Act should not be extended so as to bring all who may choose to come under the protecting wings of Government, I think, Sir, so far as this Bill is concerned, there is very little to which an exception can be taken. I go so far as to say that the original purpose of the Courts of Wards Act should be strictly adhered to, that is to imbeciles, women and minors who are the only persons who should be under the care of the Court, leaving aside other proprietors and *zemindars* to manage their own affairs as best as they may. Sir, by surrendering all the rights and privileges and responsibilities, the *zemindars* are losing ground a good deal, and if in this way all the proprietors are given protection indiscriminately, the time will not be far distant when the question will arise as to the need for the continuance of the Permanent Settlement. I think the high purposes of the Permanent Settlement was that the *zemindars* being assured of a settled revenue payable to Government, should go forward to protect their tenants, should go forward to live in the midst of their tenants and to work for them and improve their estates for the benefit of themselves and for the benefit of the tenantry. That high and noble purpose will be abused, and that purpose will no longer exist if, as a matter of fact, the *zemindars* forsake their own tenantry and transfer their estates to the management of the Court of Wards. It is for this reason that Government cannot but be too careful and cautious in accepting applications that are now coming in any number to them. Government will simply undermine the position of the Permanent Settlement if, as a matter of fact, they would extend their protection to each and everyone.

So far as that is concerned, Sir, this is the general feeling, and this is the feeling which ought also to guide Government. But so far

as the present Bill is concerned, I do not find what possible exception and objection can be taken to it. Dr. Sen Gupta was talking of the prodigal son. We are not in favour of a curator of the prodigal sons. If a prodigal son, however, returns home wiser and chastened by his experience, no father should give him up. I think, Sir, when an estate is to be administered by Government, it is only fit and proper that Government by managing the estate set an example to others to follow, and if, as a matter of fact, difficulties have been experienced on account of certain lack of provisions, there is no reason why Government should not safeguard its position by enacting necessary measures.

Here, Sir, the main purpose of the Act is not to do any harm to anybody, not to injure the creditors; but, on the contrary, to ensure a steady income to them. The provisions of this Bill are in lurid contrast with the provisions of the other Bills which we shall shortly discuss. Here we find that the creditors' consideration has weighed a good deal with Government. It may be because here the creditors are big men; it may be because the creditors are some of the big banks and Government have a soft corner for them; but so far as the creditors are concerned, I think Mr. Thompson was not quite right when he said that justice was not going to be done to them. In these days of economic distress, we find that the creditors are going to be given an interest of 4½ per cent. That is a tempting offer which would tempt any man with capital to come forward. But that is not all. If Government have in mind to continue management beyond five years, then they have to pay full rate of interest from the commencement of their management. That is, I should say, safeguarding fully the position of the creditors, and if Government having taken charge of an estate, do not protect the estate from being ruined by the creditors, certainly Government will be guilty of a gross neglect of duty. From the report on the management of the Court of Wards estates, of the year 1934-35 I find that so far as Rangpur is concerned it is stated—

"The condition of the Rangpur estates deteriorated further and the forbearance on the part of the creditors showed definite signs of coming to an end. Facts were at last faced and three of the bankrupt and less important estates under the Court were released after the close of the year and then attached for arrears of Government dues. It may have seemed harsh to have released bankrupt estates during the economic depression, but in view of the insistence of the creditors there was no other alternative."

Sir, here is a crisis, here is a very difficult situation which Government have got to face. There is no reason why Government should not assist in staying the hands of creditors who want their dues here and now. There is no reason why these big creditors

should be shown more consideration than other creditors, nor is it in my opinion in the interest of the banks to go on getting decrees and executing them in the present economic condition of the province. I am sure the big creditors do not, and ought not to, want the property of their debtors to liquidate the debt. If, as a matter of fact, some sort of protection is not there, if the creditors can execute a decree at their sweet will, the result will be that they will not in every case get the money, but only a part and parcel of the property which being a blocked capital is not desirable even in their own interest. Here, the provisions of the Bill safeguard their position in this respect, because there will be a steady income coming to them even from now in spite of the provisions. These provisions will enable Government to have a scheme prepared and worked out steadily and properly without the fear of being faced with crises and difficulties brought about by hasty action in Civil Courts and nervous execution of decrees. So, it harms nobody. Government revenue is not touched. There is no reason why, therefore, this House should deny this assistance, and why this House should object to the principles of the Bill.

With these words, Sir, I support the motion for reference to Select Committee.

Mr. F. A. SACHSE: Mr. Thompson yesterday made such a fair statement of the objects of this Bill and understood our motives so well that in my opinion he did not treat the House quite fairly in laying so much emphasis on one rather unimportant provision. There is nothing in the Bill itself, and there was nothing in the Hon'ble Member of Government's speech which indicated that Government ever thought of guaranteeing 4½ per cent. interest to any creditor of any Court of Wards estate. Section 48 of the Act—clause 14 of the Bill—which Mr. Thompson was criticising, is merely a section of priority. In the present section, the maintenance of the proprietor, the cost of management, and the payment of Government revenue are in the first class. In the second class comes rent of superior landlords and liquidation of debts of wards. There is no specific mention of interest at all. All we propose is to amplify that section and to suggest that if the funds of the estate are not sufficient to pay everybody full interest in a particular year, instead of paying 10 or 12 per cent. to one particular creditor, they should all get 4½ per cent. It gives an opportunity to the Select Committee to lay down in the Act what principles the Court of Wards should follow in this respect. There is really no indication in the present Act at all.

The only change of real importance in the Bill which the most suspicious creditor can complain against, is the amendment of section 10C. That section has been in the Act for 30 years and, as

Dr. Sen Gupta has pointed out, it already gives a moratorium for one year provided the Civil Courts agree. But that provision has proved a dead letter. It is never wanted in the first year of the Court of Wards' management. It may be wanted in the third or fourth year when unsecured creditors get impatient, because the Court gives preference to secured creditors, as it is bound to do by all principles of law and equity. It certainly is required in the middle of a long period of depression like that we are now going through. If we find that an estate is hopelessly in debt, we do not propose to take advantage of the five years' moratorium in all cases.

There is a provision in the present Act, section 23, which says, "when an estate is released because it is insolvent or for any other reason, it can be attached by the Collector for arrears of revenue." When the Commissioners originally considered what amendments of the Act were necessary, the first idea was to change that section so as to allow the Collector to keep an estate under attachment until he had paid not only the revenue, but all liabilities to all creditors; the objection to that was that in the case of some estates attachment for a period of 20 years or even more might be necessary. Therefore, the amendment of clause 10(' was preferred.

The extra powers which the Court will get if this Bill is passed are less than those the Court of Wards in the United Provinces have been enjoying for many years. In the United Provinces, the Collector can reduce the interest to 6 per cent., whereas in Bengal we always pay the contractual rate even if it is as much as 24 per cent. I have seen the papers of a case which has not yet come under the Court of Wards in which the original debt taken about 20 years ago was 10 lakhs. It is now 24 lakhs, although 13 lakhs has already been paid to the creditors. In the United Provinces Act, there is already a provision that the Court of Wards instead of releasing can sell the properties to satisfy the creditors, and an Act has recently been introduced which gives the Court power to transfer to secured creditors the properties which are mortgaged to them on a valuation calculated on pre-slump prices, that is the prices prevailing before the depression started. If the Select Committee can agree to a provision of this kind or any provision which would empower the Court to undertake proceedings for liquidation, the Hon'ble Member of Government has already indicated that as far as he is concerned, he would be willing to accept an amendment to that effect.

We are all agreed in principle that when an estate is really insolvent, it should be managed by the Court of Wards in the interest of the creditors as much as in the interest of the ward. There is no objection at all making this clear in the amended Act. But if we postpone the reference to a Select Committee and recirculate the Bill,

there is very little chance of our getting any valuable opinions on this specific point, because it does not directly arise in the amended Bill, as now drafted.

In discussing the amendments which are controversial, I hope the House will not forget that there are many other changes to which everybody has agreed and which are absolutely necessary. Dr. Sen Gupta was entirely wrong when he said that if the Bill was passed, there would be discrimination remaining between Eastern Bengal and Western Bengal. There are clauses which remove all such anomalies, and discrepancies.

The opposition to the Bill seems to come from two sources. Mr. Thompson is afraid that the creditors will suffer seriously, if this Bill is passed. There is nothing in the present law to prevent creditors going to the Civil Courts, selling up properties of a ward by enforced sale, attaching money of the estate, or even putting the proprietor in prison for civil debt. But there are very few creditors who in actual practice have ever taken any of these steps. A great majority of the creditors are reasonable and patient and they prefer to leave the estates in the hands of the Court of Wards and trust that they will get gradual payment of their full claims. The other source of the opposition is the fear, which Mr. Thompson also felt, that many other estates will come under the Court of Wards, if this Bill passes. I say that this is an entirely different question, a question of policy, not the question of amending the law from the technical point of view for which these amendments have been framed. The House may say, or the Government may say, that the Court of Wards should be abolished, or that it should be used only for minors and women, or for the benefit of those large estates only, the disintegration of which will be a serious loss to the province as a whole. If it is decided to keep the Court of Wards, the Court of Wards must be given sufficient powers to do its work properly. I therefore oppose the motion for recirculation.

Khan Bahadur MUHAMMAD ABDUL MOMIN: I listened to the speech of the Hon'ble Member in charge of the Bill with special care and attention in order to discover if there was anything in it to justify the very extraordinary measure which has been brought before the House. I am afraid, however, that it has left me singularly unimpressed. It is significant that the opposition to the motion for reference of this Bill to the Select Committee has come from a quarter which is recognised to be the most practical and perhaps the most sensible quarter of the House, from a quarter which very seldom goes into opposition against Government. I agree with Mr. Thompson in most of the things he has said, but my chief objection to this Bill is on the question of principle—the principle of the Bill which in my

opinion transgresses the law between man and man. The principle of this Bill is the protection, not of class against class, but of individuals against individuals, and only a few individuals, namely, those who come under the protection of the Court of Wards. Mr. Ray Chowdhury has said that the Bill is not going to do any harm to anybody. I am surprised that he should express such an opinion, considering that the Bill provides not only for a moratorium for 5 years but a moratorium for 15 years against creditors who perhaps expected and wanted to realise their dues almost immediately after the assumption of the estate by the Court of Wards. Why should the creditors be kept out of their dues for such a long time? When they lent money to the landlords who were not illiterate people or people living an economic life like the tenants or the *raiyats*, but people who had their eyes open, they expected a fair return and safety and security for their money. Suddenly they are now confronted with a protection which this Bill proposes to give to the landlords—a protection which is going to extend for 15 years. It is not a fact that in every case the creditor is one who can afford to allow his money to remain unrealised for an indefinite period of time. There are creditors who have lent money in the hope that they will be able to get it back very soon. They have probably themselves borrowed money from others to lend it to certain estates: What will happen if they have to wait for 15 years without any chance of getting their dues back? Protection against contract and against the ordinary law is justified only where the people who have entered into a contract deserve some such protection. The way in which the Court of Wards Act has been administered in the past, I do not say in the remote past but say within the last 20 years, does not justify protection to those people whose estates are being taken under the wings of the Court of Wards. Had the Court of Wards Act been first amended so that its provisions would extend only to minors, widows, females, imbeciles and lunatics, perhaps we would not have objected to protection, but what we find nowadays is that *zemindars* who have spent all their money in luxuries and dissipation and have not been able to manage their estates——

Mr. PRESIDENT: Order, order. I think you had better withdraw the word "dissipation."

Khan Bahadur MUHAMMAD ABDUL MOMIN: I bow to your decision. I am afraid I do not know another synonym that will express that idea. As I was saying, the people who have mismanaged their estates or who have not done their duty to the people or who have not fulfilled the intentions of the Permanent Settlement, now come forward to ask for protection which I do not see in any case they deserve. Therefore, I say that before you give protection you must first amend the Court of Wards Act or at least lay down a policy that no estate will be brought under the management of the Court of Wards unless

the proprietor is a helpless minor or a female or an imbecile. We find nowadays people who are disqualified proprietors acting in the highest positions and managing other people's affairs—people who are not qualified to manage their estates managing——

Mr. PRESIDENT: I do not think you need refer to that.

Khan Bahadur MUHAMMAD ABDUL MOMIN: I was not referring to anybody in particular, but if the cap fitted anybody I am not responsible.

Mr. PRESIDENT: Perhaps you are not as ingenuous as you wish to be. (Laughter.)

Khan Bahadur MUHAMMAD ABDUL MOMIN: Coming to details, there is the question of allowance. I do not think it a matter of urgency to make any change in the Bill for, although according to the section of the Court of Wards Act maintenance of proprietors must be fixed having regard to their status and position as a matter of fact this provision was in the past observed more in the breach than in its observance; and nobody has ever raised any objection. I do not see that there is any urgency in amending the Act in this respect. I would advise the Hon'ble Member in charge of the Bill to withdraw this amendment and to bring in a proper amendment of the principle of the Bill so far as assumption of estates are concerned, and then give as much protection as you like to the people who actually need it. But till then it will be difficult for us to support the motion.

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur: Sir, I cannot see eye to eye with the mover of the present motion, namely, to circulate the Bill for public opinion again. The Bill had been introduced in Council in August last and was published for public opinion. Those individuals or associated bodies who cared to give their opinion have done so and those who have not done so will never do it. Mr. Thompson's proposal that the Bill should be published for eliciting public opinion by the 30th January, 1936, will be of no avail. I do not think we shall gain much benefit if the consideration of the Bill be postponed for two months more. Those who have cared have given their opinion and those who have not will never come forward even if two years' time be allowed, not to speak of two months. Mr. Thompson has complained that the opinions of the Bengal Chamber of Commerce and of the European Association have not been received. If it is a fact, I would request the Chair to see that their opinions be placed before the members of the Select Committee before they actually sit. The Select Committee is the proper body which can go into these things

very fully and can devote much more time to scrutinise these things more carefully than this House. We can do justice to these opinions if these be read before the Select Committee.

I am sorry there has been a great misunderstanding about the aims and objects of the Bill. The real object of the Bill, as I understand, is to check the activities of overzealous creditors who, notwithstanding the fact that they have secured debts, sometimes take pleasure in filing suits in Civil Courts in order to get a decree. Apart from this, I find from practical experience that whenever a creditor brings a suit, other creditors rush to the Court to obtain decrees at the same time. You can well imagine the position of a debtor if all the creditors come forward to execute their decrees at the same time. Not to speak of individuals even well-established banks can hardly afford to pay if all the depositors ask for payment simultaneously. There is a special provision in the Banking Law regarding the payment of money to the depositors, but there is no provision for the *zemindars* or tenure-holders when all the creditors demand their money at the same time. I understand that the real object of the Bill is to protect the *zemindars* in that way. Sir Brojendra in his Statement of Objects and Reasons has clearly said that in some cases the creditors have not been willing to make due allowance for the difficulties of the times. I think that for this purpose he has brought in this Bill so that the creditors may not be able to demand their money all at a time and ruin the *zemindars*. If they can wait, I think the estate can be saved. I have seen from my personal experience how *zemindars* have been ruined owing to the combined action of the creditors in demanding all their money at a time. The principal object of the Bill is to prevent that sort of ruinous action. It does not aim at curtailing the powers of the creditors, but on the other hand it strengthens their powers. At present it is very difficult sometimes for a creditor to realise even the interest for his money, but in the present Bill a provision has been made for payment of 4½ per cent interest. Mr Thompson has complained that there is no security for that, but if he is not satisfied with the present wording of the proposed Bill, he can make alterations and rectify any defects in the Select Committee so that it may be obligatory on the part of the Court of Wards to pay interest, and that may probably satisfy Mr. Thompson. Sir, I feel that the general complaint of most of the members of this House is that the Government want to take estates indiscriminately under the Court of Wards. As you know, Sir, in the beginning only the estates of minors, widows, and lunatics were taken under the Court of Wards. Since then the Act has been changed and it has been extended to the estates of adults also. Personally, I know that several estates have been taken under the Court of Wards owing to the economic depression; but I do not think that if Government have done that, they have done that indiscriminately. I also know personally that some of my friends had tried to place their estates under the Court

of Wards but were refused. So, it will not be just on the part of the members of this House to say that all the estates that have come forward to be put under the Court of Wards have been taken in. Besides, Sir, it is not a pleasure for the *zemindar* to place his estate under the Court of Wards and to remain under the control of Government. On the other hand, *zemindars* have been obliged to do so only under the present economic distress. Nor is it even a pleasure to the Government to take the estate of a *zemindar* under the Court of Wards and thereby run the risk of not receiving the Government revenue in time and thereby losing the benefit of the revenues for the time being. So, I think it is not at all just to suppose that the *zemindars* have come forward with pleasure to place their estates under the Court of Wards, to be subordinate to the Government, and to lose all control and power over their estates; as a matter of fact, no one will even desire to do so. To-morrow, or probably this evening, we are going to discuss the Debtors' Bill, where the policy of dealing with creditors has been clearly laid down and accepted by the House. In that Bill it has been suggested to curtail the interest and even the principal and also to scale down the rate of interest, so that we can easily imagine how the creditors will suffer by reason of that provision. Now, if that principle has been accepted, I cannot see why we can object in this case when there is no need to curtail the interest or the principal sum. Here what is wanted is the extension of the moratorium from one year to five years, that is, for four years more; only four years' time is wanted. But in that Bill we have taken the greatest advantage under the protection of the law by extending it to 20 years' time (MR. P. BANERJI: But we are going to throw that provision out) whereas only a very short time is wanted in this Bill.

As a matter of fact, Sir, there is hardly any difference between the cultivating *raiyat* and the *zemindar*. (KHAN BAHADUR MUHAMMAD ABDUL MOMIN: No difference?) Yes, no difference, for both of them are agriculturists by birth and profession and their principal occupation is agriculture, but they differ only in this that the resources of the *zemindars* are wider and their incomes higher than those of the *raiyats*. Otherwise, they both live on agriculture. So, when the House has accepted the principle embodied in the Debtors' Bill, I cannot see how they can object to the same provision on a much modified scale in this case.

Secondly, if all other people in different vocations are demanding and can demand protection, why not landlords? We always hear the demand or clamour for protection of steel, tea, sugar, jute and so on. The Government have protected them by tariff and by various other means. Why the persons who deal in lands should be deprived of protection during these troubled times? There is no special favour shown to their case. There cannot be any departure in this case of the

practice followed by the Government for other various interests. The landlords are not demanding any special favour, but only to protect them in this time of depression. The Government have brought this Bill as they often do for others' interests. Measure after measure has been passed and enacted to give relief to business men; why not to landlords who deal with immovable properties while others deal with movable properties?

I agree with Mr. Thompson that in dealing with creditors the Court of Wards should be consulted and some provision should be made for the payment of their money and interest as well as for the number of years that will be taken to clear off their debts. I do not think it will be wise on the part of the Court of Wards to fix an arbitrary sum or to reduce it to anything like that suggested in the Bill without consulting the creditors. I agree with Mr. Thompson also that this should be done and also when he says that the Court of Wards should be a trustee both for the debtors as well as for the creditors. This is the position which the Court of Wards should take up. And I do not think there is necessity for any opposition on the part of the Government to accept that position. With these words, Sir, I oppose the amendment.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: I am sorry, Sir, I was absent from the House when yesterday a most important speech was delivered by my friend, Mr. Thompson. But I carefully read a report of the speech in to-day's *Statesman*, and I am sorry that, although we have been working together and practically going to the same lobby with him for the last few years, I cannot agree with him.

The question is: Does Mr. Thompson admit that the time is such that protection should be given to every section of the people by Government? Is it not a fact that on this side of the House we had been pressing upon Government for the last three years to do something to help the people of all classes who were in distress on account of the economic depression that has been prevailing in the country and we were very angry with Government when they were moving very, very slowly whereas we wanted them to be very prompt in their measure for the amelioration of the condition of the people? But now after a belated period of three years Government have at last come forward with two Bills—one of them has been discussed fully, its principle accepted by the House, and has been referred to a Select Committee, which I understand has finished its labours and made some recommendations and alterations and which report is to be taken up this evening. The present Bill is just in line with that Bill, and I hope a third Bill will also be brought forward for giving relief to middle-class people, including the European community. And if my friend Mr. Thompson believes that he should get some help from Government, then let him be frank, let him make some concrete proposals to Government as well as to this

House, and if the Government will not hear him, the House at least will be glad to do so and give him their support to alleviate any distress that may be prevailing in his quarters. But when it is found that the estates of certain *zemindars* are absolutely in the grip of Government, which means absolute negation of their power as proprietors upon the estates and complete handing over all their powers and position to Government for the safety of the estates, when such a thing happens and if in such an event *zemindars* want to entrust their estates to the Court of Wards, should not the mighty Government extend their protection to such people, and is it wrong to deny them any assistance if they want any from the Legislative? Here, Government after considering the case from all points of view have come forward with a concrete proposal just to enable them, when they find that the entire money cannot be paid off, to pay a portion of it or a portion of the interest even. And, Sir, to whom are you going to give this power? Not to any of the proprietors themselves who may perhaps squander away their fortunes if such power is given to them, but we are simply giving this power to the trustee of an estate. Here is the trustee of an estate saying, "to fulfil my duty towards those who have absolutely ceased to exist as proprietors and who should get protection I want such-and-such powers from this House." Now, why should this House refuse him this power and even question the honesty and purpose of Government? I do not understand the reason for it.

Then, the question is whether this will help the tenants as a class. From my own information I can give you one concrete case which will clearly show how the tenants will be benefited by this measure. I know of a case where the debt is Rs. 243 thousand, while the arrears of rent from the tenants is Rs. 245 thousand. So, I argued with a high official. I told him: Here is a case in which it is proposed to sell a part of the estate. I asked him there is no reason why we should lose a part of the estate, because if anybody is responsible for the debts, it is the tenants; they have not paid their dues; and why should the *zemindars* suffer for that. You, Sir, know that the rights of the tenants have become very precious nowadays. (KHAN BAHADUR MUHAMMAMD ABDUL MOMIN: Always were.) Yes, always were, always are, and will always remain precious. I asked the official whether he had not got a few scraps of paper just to write out a decree against the tenants and sell their rights and get the money from them. Sir, I can tell the House this much that the high official said that this was the last thing he could do, that he would sell the rights of the tenants and help the *zemindars*. The present Bill that has come to the House will solve the problem. The money-lenders who want their money back can wait for five years; in the meantime the money can be realised from the tenants not all at once, but gradually. So this is a typical case which will convince my tenant-friends that if the Court of Wards manages an estate and gradually realises the money paying off the creditors, will it not serve

them better? If, on the other hand, the property is released by the Court of Wards and a powerful man takes over charge of the estate, what will he do? Will he not sue all the tenants in the Courts and deprive them of their rights and make them serfs? So my point under the circumstances is that if the Court of Wards can be entrusted with additional powers which it wants from us, it will not really harm any party. All that I can see in the provisions of the Bill—though my lawyer friends might interpret it otherwise—is nothing but an honest business proposition. When we cannot pay the entire money let us pay it at a certain proportion. The two tables given show in what way the money will be paid and nothing more than that. It does not say that even a *cowri* of the creditors due will lapse. As far as I have read, I can find nowhere it is said that a farthing of the creditor will lapse owing to non-payment of the entire amount The creditors' money will remain there—if not in the bank, in the hands of the Court of Wards. I think you can believe the Government and the Court of Wards that they will be just I have full confidence in them, and I believe that if you give them this additional power—after all they are human beings and may make a little mistake here and there—they will do justice to the people at large. If I have been able to explain to my tenant-friends through you, Sir, I hope they will understand that this is not a measure against the tenants. If a leader of the tenants' party opposes anything, the general impression is that it is against the tenants' interests. So I have explained to the House that it is not at all against the tenants' interests that this Bill has been proposed. It is rather to support the tenants' interests that it is proposed. I can honestly tell you that that is the real intention of Government. If the Government wanted to realise the entire amount from the tenants, they could easily do so by the sale of the property by one stroke of the pen and thus deprive the entire tenantry of Bengal of their rights. But that is not the desire of any of us. So let us arm the Court of Wards with all the necessary powers, and I am sure they will discharge their duties in such a way that there will be no harm done to anybody. It is nothing but a reply from this side of the House that this Bill is not against the interests of the tenants. When I am explaining my position, I think the Khan Bahadur ought to remember the memorable resolution of Dr. Sen Gupta which I moved in this House with your leave, Sir, and as a result of which the present Economic Enquiry was started and we expect a lot of good to come out of it. I may say that Government simply yielded to the pressure from this side of the House and the resolution was carried against Government. I think we should not blame the Government now.

With these few words I wholeheartedly support the motion of my hon'ble friend Sir Brojendra Lal Mitter and oppose the motion for circulation.

Babu HEM CHANDRA ROY CHOUDHURI: Sir, I rise to oppose the motion moved by Mr. Thompson. He describes the Bill as discriminatory. Khan Bahadur Abdul Momin says that the provisions of the Bill transgress the law between man and man. Sir, is the policy of discrimination a new thing in India? I think it is not. What is the position of British trade in India? Is it not based on the policy of discrimination? Is not the Ottowa Pact based on the policy of discrimination? Has not India raised her voice of protest against that policy? Will Mr. Thompson join with India in raising his voice of protest against this pact?

Sir, Khan Bahadur Abdul Momin said that this objection comes from a quarter which is most practical and sensible. From what I have said it will appear that their idea of practicability goes with their self-interest. What does the Bill propose to do? It only provides that the creditors will have to wait for some years, but they will get a rate of interest for these years and that rate of interest is much more than that of the bank. Nowadays the bank rate is only 3 per cent., but the Bill provides to pay the creditors at 4½ per cent. If they get by way of interest more than what they would have got if they had invested it in the banks, I think no reasonable creditor will be reluctant to agree to the proposal of the Court of Wards. Sir, I find that the Khan Bahadur has taken up the cause of the creditors. It is a very amusing thing to me. We shall presently discuss the Relief of Agricultural Indebtedness Bill. May I ask the Khan Bahadur, what he will do in supporting the Bill, with his sense of justice and equity or his love for sanctity of contract. If he can support a scheme which may deprive the creditors not only of their interests but even their principal, then if we are asked to support a Bill which ensures a rate of interest which is not lower than that of the bank, I think we are not doing any injustice to the creditors.

Khan Bahadur Abdul Momin has said that he would have no objection to support this Bill had the wards deserved protection. Sir, the tea planters deserve protection, the glass manufacturers deserve protection, the jute mill factory-owners deserve protection, the cultivators deserve protection. Is it only the landlords, the management of whose estates has been taken over by the Court of Wards that do not deserve that protection? They are also heavily indebted. Their case for protection is no less reasonable than that of the agriculturists or the tea planters. The Khan Bahadur has said that because some of the landlords are prodigal, this protection should not be extended to them. The landlords are not the only people who are prodigal. It is almost all who have at their control money more than what they want are prodigal. No sense of justice or equity

should therefore stand in the way of giving protection to this class of people. With these words I oppose the motion of Mr. Thompson.

(At this stage the Council was adjourned for 15 minutes.)

(After Adjournment.)

(The President here called on the Hon'ble Sir Brojendra Lal Mitter.)

Mr. P. BANERJI: On a point of order, Sir. Will we have an opportunity to speak after the Hon'ble Member?

Mr. PRESIDENT: There is no objection, if you find it necessary. If you have no new point to make out, you should not.

The Hon'ble Sir BROJENDRA LAL MITTER: I should like to hear him, perhaps Mr. Banerji may have a new point to make. I would like to hear him.

Mr. P. BANERJI: In rising to support the motion of Mr. Thompson, I would first of all like to deal with the Raja Bahadur of Nashipur who has just told us that he is as much an agriculturist as the ordinary agriculturist, because both of them live by agriculture. I would point out, Sir—the Raja Bahadur is not here—there is a great deal of difference between the one who lives on agriculture, and another who lives on the agriculturist—and this difference is as wide as poles asunder. The Nawab Bahadur has told us that as soon as an estate goes under the Court of Wards, the tenantry practically will not suffer at all. But, Sir, we know very well from experience that under the Court of Wards, it is absolutely an engine of oppression. Nobody can deny that. The Hon'ble Member will bear me out when I say that in Rajshahi Division the many holdings have been sold out not only for rent, but also for interest and costs as soon as it comes under the Court of Wards, and no mercy is shown to them. That being the position, it cannot be said for a moment that under the Court of Wards, the tenantry do not suffer. If we go into this Act we find as the Hon'ble Member has said in moving his motion, that he wants to preserve the estate for the benefit of the creditors. Wonderful indeed! Is it in any way for the benefit of the creditor or for the purpose of crushing him. Mr. Sachse also said the same thing. He gave us an instance when he said that an estate was indebted to the extent of 20 lakhs, and only 13 lakhs was realised and still that estate is indebted to the extent of 20 lakhs. May I enquire of the Hon'ble Member what is the position? If the money is realised, it goes to the person who advanced it. The estate cannot go by default. The lender could then lend the money out elsewhere and realise his dues. What is the difficulty? Is it that one creditor has been very considerate and

allowed that estate to go on and has waited for a long time, and by some arithmetical calculation he will find the sum of 20 lakhs principal will amount to 24 lakhs? Now we find one point very much emphasised by the Raja Bahadur and also the *patnidar*, Mr. Ray Chowdhury when he says that discrimination has been rather the order of the day, and therefore why should not these people be treated similarly? My submission is that originally this Bill was meant, as the Hon'ble Member pointed out, for the protection of minors and women. Subsequently because, Sir, we missed by an inch and therefore missed by an ell, a second amending Bill came, and now there is a third amending Bill. Mr. J. L. Bannerjee corrects me and says that it is the seventeenth amending Bill. If this is the case, we do not know why a particular class of people of their kind who have been proved incompetent should have this protection extended to them, while under similar conditions and similar circumstances it is not extended to others? This is one point which Mr. Ray Chowdhury told us and which the Raja Bahadur also mentioned from his experience that it is not extended to all. My submission is that it is favouritism given to certain people who are basking in the sunshine of the Government's favouritism. That favouritism which is always shown if any protection is needed to a particular class of people, people who have done no good to anybody and are of no use to any society. Indeed, can it be maintained for a moment in the case of a person who has proved his incompetence? When the estate was solvent with its own income, the owners at the same time borrowed money right and left. The creditors did not know this and later the landlords had to go insolvent. If this protection is extended, what will be the result? These people will borrow right and left and at once come to Government with an application, and Government will, as has been suggested by Mr. Satish Ray Chowdhury, extend the protecting wing of Government over these people. Under the circumstances, is it fair on the part of the Government as maintained by the Raja Bahadur and the Nawab Bahadur? Government must be impartial. As the Nawab Bahadur pointed out, one Bill has been passed for the cultivator, and another for the protection of *zemindars*, and now there should be another Bill for the protection of the middle class. We welcome that Bill. But we say that this is an attempt against the middle classes, and this is the policy of Government to ruin the middle classes because it is the middle classes that fight for freedom. That is the underlying policy of every measure to-day. Why should Government protect? The Hon'ble Member the other day said that capital assets would remain intact. That point was smashed by Mr. Sen Gupta. I will give one instance of a case under the Court of Wards; the case of the Bhowanipore estate. What has happened? It has gone under the Court of Wards. Why has such an estate been protected? This protection is intended only for minors and women. Is it fair that

protection should be extended to anybody and everybody? That is not the object of the Bill at all. Do you know, Sir, now that it is under the Court of Wards, it is practically under the Government officers, though they are not full fledged Government servants, yet at the same time it is under the direction of the Court of Wards' Magistrate. Now, Sir, why in similar circumstances is not protection given? Why is protection needed only in the case of Government? Because the Government on the one side has machinery to realise by certification of all rents with interest, and also costs immediately, and on the other side they want protection from these creditors. This shows utter incompetence of the Government. They will not pay to the creditors and ask them to wait. From the Administration Report we find that in order to bring the estates of incompetent *zemindars* under the Court of Wards they want special powers. If Government want to protect them, I do not see why should not the owners of other estates also be given that protection. As I just pointed out one instance of the Bhowanipore Wards Estate when a plot (No. 25) was sold by beat of drum in the presence of the Circle Officer, Sub-Deputy Collector and *tahsildars*, the highest bidder was Srimati Nihar Bala Mandal, wife of Babu Rangalal Mandal, and Srimati Sumati Bala Halder, wife of Babu Saruda Prasad Halder, Pleader, Diamond Harbour. The highest bid was Rs. 20 per *bigha* and the rent was Rs. 2 per *bigha*. Even after 4 or 5 months she could not get possession. Subsequently she found some tenants—

Mr. PRESIDENT: Are you really giving an instance in respect of which any of the principles of the Bill can be applied?

Mr. P. BANERJI: Yes.

Mr. PRESIDENT: Are you sure of that?

Mr. P. BANERJI: I was just going to show the inefficiency of the Court of Wards.

Mr. PRESIDENT: We have got nothing to do with that for the present.

Mr. P. BANERJI: When some powers are going to be given to the Court of Wards to protect incompetent *zemindars* I do not understand why we should exclude the other *zemindars*.

Mr. PRESIDENT: I think I shall be compelled to rule you out of order unless you are able to show that you are actually illustrating any of the principles of the Bill.

Mr. P. BANERJI: It is for you to consider whether the principle of the Bill applies to the case I was just mentioning.

Mr. PRESIDENT: Order, order. I must stop you as introducing irrelevant matters if you cannot satisfy me that you are citing an instance to illustrate any of the principles of the Bill.

Mr. P. BANERJI: Unless you hear me for a moment how can I satisfy you?

Mr. PRESIDENT: I cannot allow you to continue in this fashion unless you can tell me what relation your example bears to the Bill before us.

Mr. P. BANERJI: May I ask you, Sir, what is the principle of the Bill?

Mr. PRESIDENT: It is your business to know that. But if you are really ignorant of it, I may tell you this much, and that is enough for your present purpose, that the Bill chiefly proposes to extend the period of moratorium from one year to five years and seeks to invest the Court of Wards with power to stay the decree of a Civil Court in respect of a ward's debt for a certain number of years.

Mr. P. BANERJI: My discussion will prove that thing. I just put it to you, Sir, that the highest bid of Rs. 20 per *bigha*——

Mr. PRESIDENT: I am afraid you are going to make a mess of the whole thing.

Babu JITENDRALAL BANNERJEE: On a point of order, Sir. You have said that the point of order is that the period of moratorium should be increased from one to five years. The point is whether the power of extension should be given to the Court of Wards; if it is given, the question of efficiency becomes relevant.

Mr. PRESIDENT: I am afraid you have failed to comprehend the real import of what I said. The question of inefficiency with reference to the provisions of the Bill we are now discussing, may be relevant, but if it is to be proved by an illustration, it must go to show that the powers which the Court of Wards are seeking to extend have been abused; but Mr. Banerji, I am afraid, is not relying upon any such case. However, I feel that I shall be saving the time of the Council by allowing him to proceed as far as I possibly can.

Mr. P. BANERJI: Now you have just told us that where during the period of five years' moratorium there is a depreciation in the value of the property, the creditor will be allowed to realise interest on his money. That is the main point. I will prove to you that it will not be possible. The particular case I was citing will bear me out. As I was saying the highest bid was Rs. 20 per *bigha*, but after six months each *bigha* was sold at the rate of Rs. 7 only and possession was given to the new buyers. This particular property consisted of hundreds of *bighas* of land, and the owner lost Rs. 13 per *bigha*, and as it is a huge plot, the loss is very great. If other estates are similarly dealt with, there will be great depreciation in the value of the property. So I say that the argument of the Hon'ble Member is not tenable in any circumstances and as has been said by the leader of the Proja Party the argument of Mr. Sachse also is not at all convincing. In the circumstances, I will ask the Hon'ble Member to withdraw his motion.

Babu JATINDRA NATH BASU: Sir, I have listened carefully to the speeches that have been delivered calling attention to certain special features of the Bill. The feature that Mr. Banerji and some other speakers have pointed out, is that there should be a provision for a moratorium. Now the point of view from which, I submit, the proposed amendment should be looked at is as to whether it is for the general benefit or for the benefit of any particular class or individual. The Court of Wards was established so long ago as 150 years back. It was in pursuance of the policy which was then inaugurated. The persons whom the Court of Wards had to deal with were persons from whom the State received its revenue. There were stringent revenue laws which ensured that payment should be made punctually and regularly. It was, therefore, in the interests of the State that the payers of revenue should have a certain amount of protection, and one of the results intended was that the revenue-payers might not exercise undue pressure on their tenants who are in most cases the ultimate payers of the revenue. By the alteration, it is intended to relieve the pressure that would otherwise fall on the payers of revenue to Government and to give breathing time to them so that they may not in their turn prey upon the tenants and squeeze them. That is one of the points of view from which the thing should be looked at, and that is probably one of the reasons why the policy of bringing the estates under the Court of Wards was adopted 150 years ago when the revenue system in this province was being organised. There is some hardship to creditors. Those who are familiar with the administration of civil law know that the period of moratorium is not fixed in several matters, for instance, in matters of insolvency or in matters of liquidation of companies. What happens is that they take years; in Calcutta some

big banks went into liquidation and the liquidators who were expert businessmen took more than 15 years over it and the business of liquidation even now is in their hands. If for the protection of creditors the Imperial Bank of India had not come forward to purchase some of the big buildings belonging to one of the banks which went into liquidation, very likely the liquidators would have to wait for a long time in order to find buyers on terms beneficial to the creditors. In actual practice it is found that when a debtor is in difficulty, it is to the best interests of the creditors that a regular scheme should be framed so that no creditor might suffer and no particular creditor might have an advantage over other creditors. Mr. Sachse has pointed out that in some cases an individual creditor has come forward, in spite of the Court of Wards having taken over the estate and framed a scheme, with a decree and has tried to sell the property of the proprietor. The result has been that while other creditors who relied upon the fact that the estate was in the hands of the Court of Wards and hoped there would be an equitable distribution of assets of the debtor, the creditor who pushed forward and obtained the decree and took execution proceedings gained. That is the kind of thing which every law desires to discourage so that the general body of creditors may not suffer. Generally speaking, the provisions of this Act do not go beyond what in actual practice of law happens in cases where debts have to be liquidated. You are aware, Sir, that a few years ago when the economic pressure began to be felt, a large number of money-lending concerns which exist all over the province— some of which are known as banks—went up before the Courts and sought protection under the provisions of a section in the Indian Companies Act, viz., section 153, by which they could postpone repayment of their deposits by as many years as possible, and some of them have prolonged that period up to twenty years so that the creditors as Mr. Banerji knows, are helpless in those cases where the provisions of section 153 have been applied. It has been sought to be urged before the House that these landlords are spendthrifts and that it is not necessary that any protection should be given to them. But as I have pointed out, it is not so much for the protection of the landlords as the protection actually of the tenants and of the general public who deal with the proprietors of the estates that it is necessary that some system should be established by which the tenants may not feel the pressure and the landlords may not constantly go up, as they do now, to Government for power to have their dues realized by what is known as the certificate procedure. Such applications, revenue officers will tell you, are fairly numerous nowadays, and that is the thing which hurts the tenants.

Babu JITENDRALAL BANNERJEE: The Court of Wards also issue certificates: There are plenty of them.

Babu JATINDRA NATH BASU: Yes, the Court of Wards also issue certificates, but there is this difference that if the property is in the hands of the proprietor himself he must pay revenue by a fixed date; otherwise, the property is notified for sale, whereas as Mr. Banerji knows, the Court of Wards Act specifically provides that if the property is in the hands of the Court of Wards there is no such duty cast on it that the revenue must be paid on the due date before sunset, though ordinarily it is required to be paid on a particular day, so that in a time of stress, such as the one we have been passing through since 1929 onwards, the people being in need of some relief have not been pressed for the payment of their dues while they had not the means to pay.

Then, again, Sir, there is another fact which should be taken into account. The proprietors of estates which are taken over by the Court of Wards have assets which are not in a liquid state, that is to say they cannot be immediately availed of with the view of being distributed, discharging debts and of having the net balance invested or kept apart for the benefit of the proprietor. The assets are mostly landed property, and landed property is difficult to sell particularly in times of economic stress. Whether the property is agricultural property outside the cities or residential property or business property inside town areas, it is exceedingly difficult to sell them as those that have to deal with properties of this nature know. Having regard to that circumstance, time is needed; and the time that has been provided in the draft Bill is not very excessive. In spite of this maximum time-limit, Government will always be on the look-out to see as to whether the carrying out of the scheme of liquidation, which is adopted in the case of every estate by the Court of Wards, can be given effect to earlier than the period of time fixed by this amending Bill.

Sir, on the whole, the difficulties anticipated by Mr. Thompson and those who have supported him are practically non-existent. In practical working there is the same circumstance in other liquidation cases as well as in the administration of estates, whether they are estates of companies or of persons who seek the benefit of the insolvency law. In this case there is no question of insolvency, because if the Court of Wards finds that an estate is really insolvent, it does not take it over at all, or releases it after taking charge if it transpires later on that it is an insolvent estate. It is only estates that are solvent but which are being pushed into a corner because their assets cannot be immediately availed of for the satisfaction of creditors, that are taken over. On these grounds I oppose the amendment moved by Mr. Thompson and support the motion of the Hon'ble Sir Brojendra Lal Mitter.

The Hon'ble Sir BROJENDRA LAL MITTER: In the course of the debate the policy as well as the principle of this measure have been discussed. Sir, the policy of the measure is that provision should be made so that the economic disturbance due to the depression may be minimised. If *zemindars* be a necessary element in the economic order of Bengal, protection of that class is a necessity in preserving the economic order—that is the policy. The principle of the Bill is that in order to give effect to that policy some breathing time should be given to the Court of Wards to manage the estates which come under their charge—that is the principle. The various clauses of the measure are intended to give effect to that principle. Sir, from the trend of the debate it transpires that there is a general impression that the Court of Wards is only too ready to take any estate under its charge and that if this measure is passed, the Court of Wards will be still more liberal in taking charge of estates. Hon'ble members of this legislature have, however, overlooked the provision of the existing Court of Wards Act, which in section 6 sets out five classes of disqualified proprietors. Most of the criticisms have been made with reference to the fifth class —that is, the class of landholders in respect of whom the Court has declared on their own application that they are disqualified and that it is expedient in the public interest that their estates should be managed and controlled by the Court of Wards. So, it is not merely on the application of a man who says "I am unable to manage my estate" that the Court of Wards takes over the estate, but the Court of Wards must in the first instance be satisfied that assumption of charge by them is in the public interest.

Dr. NARESH CHANDRA SEN GUPTA: What is in the public interest?

The Hon'ble Sir BROJENDRA LAL MITTER: Well, "public interest" is an expression which is capable of various meanings and the Government for the time being has to decide having regard to all the circumstances whether it is or it is not in the public interest that a particular estate should be taken charge of by the Court of Wards. It is difficult to define a phrase like "public interest"; that must vary according to circumstances. All that can be said is that it is not individual interest. That is the safeguard against an undue readiness to take charge of estates by the Court of Wards.

Sir, I shall now deal with the points which Mr. Thompson has made. His first criticism was: "Why should there be one law for estates under the Court of Wards and another law for other estates?" I am sorry Mr. Thompson is not here; nevertheless, I must give my reply. Sir, in every system of jurisprudence in every country you will find that circumstances necessitate different laws being applied to different sets of cases. Even in the matter of debtors and creditors there is one law in respect of ordinary debtors and another law for debtors who

seek the protection of the Insolvency Courts. Take an estate which is being administered by the Court. When an administration order is made all the rights of the creditors are suspended; but an estate which has not been administered by the Court, the rights are in full force. Why is this difference? These differences are necessary for the protection of society. Similarly, if it becomes necessary for the protection of society or for causing the least disturbance of the economic order, that a certain class of people should be given protection, it is the duty of the legislature to accord protection to that class of persons. It is in pursuance of that policy that the Calcutta Rent Act was passed. Sir, why was that Act passed?

Mr. P. BANERJI: But that was merely a temporary measure.

The Hon'ble Sir BROJENDRA LAL MITTER: The European Group, that is now raising these objections, was the loudest in support of that measure. And why was the Rent Act passed? Because an emergency arose in which the tenants of Calcutta had to be given protection against landlords demanding excessive rents. When moving my motion I pointed out that in this case the economic depression during the last few years has brought about a set of circumstances in which the economic order of society demands that *zemindars* whose properties are being managed by the Court of Wards should be protected in a manner that creditors may be secured. There is no question of the defeat of the rights of any class of persons; nor is there any question of reduction of debt; nor, again, is there any question of scaling down the rate of interest. The creditor will retain all his rights; only the assertion of those rights will be suspended for a short period of time. Why? Because such a period is necessary for the Court of Wards properly to manage those estates. Manage for what purpose? For the purpose of benefiting everybody; not for the purpose of benefiting one creditor to the prejudice of other creditors; not for the purpose of benefiting the proprietor as against his creditors, but that all creditors may get their dues as much as possible out of the estate. That is why a short time is necessary. The principle is already recognised in the existing Court of Wards Act under section 10 (*c*), where one year's moratorium is given in certain circumstances. All that we are wanting here, having regard to the present economic depression, is that the period of one year be extended to five years- that is all that we want. When this emergency passes away, the legislature can immediately alter the law as being no longer necessary to keep it in being.

If you say "Why not limit the life of the Bill?" my answer will be that no one knows how long this economic depression will continue. We are feeling the full effect of the depression now. Although the depression commenced shortly after 1929, it is now that we are feeling the full force of it and that is why we have come forward with this

measure. When I am proposing that the rights of the creditors should be suspended for a brief period, I may point out that Government is already suffering some restriction of its rights, because as soon as the Court of Wards assumes charge of an estate that estate becomes immune from sale for arrears of Government revenue. So in regard to the restriction of rights it is not merely the creditors who will suffer, but also the Government. And why? Because restriction of ordinary rights is necessary for the purpose of protecting these estates.

Mr. PRESIDENT: Sir Brojendra, I am afraid I have to adjourn the Council now. Will you please resume your speech after the adjournment?

(The Council was then adjourned for 15 minutes.)

(After Adjournment.)

The Hon'ble Sir BROJENDRA LAL MITTER: The second point which Mr. Thompson made was that this was a wrong time to bring in a measure like this. My submission is that this is pre-eminently the right time. It is the time of depression and the handicaps of the Court of Wards have become acute. If times were normal, probably this measure would not have been brought forward. If collections were regular and good, if Government revenue and cesses were regularly paid and if interest and portions of capital could be paid according to plan, then any such Bill as this would not have been necessary. It is because collections are not regular, that the time is bad and cultivators owing to bad times are not able to pay their rents and, consequently, *zemindars* find it difficult to pay their revenue, that is why this measure is brought forward. My submission is that Mr. Thompson's argument is not sustainable.

His next point was that this Bill made the assumption that every estate taken over by the Court of Wards would be ultimately saved. He says that that assumption is wrong. My answer to this is that when the Court of Wards takes charge of an estate, it does so with the intention of saving the estate. As Mr. Thompson is well aware, there are certain rules by which the Court of Wards is guided. These are not statutory rules, but rules which have been framed by Government for the guidance of the Court of Wards. Under these rules an estate which is not likely to pay off its liabilities within 15 years, is not likely to be taken charge of by the Court of Wards. Fifteen years is the period during which the Court of Wards expects to liquidate the debts. In these circumstances the assumption must always be that when an estate is taken charge of it is solvent, at any rate it is with the expectation of saving it that the Court of Wards assumes charge of the estate. If

the estate is hopelessly in debt and is past redemption, it is no use for the Court of Wards trying to manage it. Therefore, that assumption is a just and proper assumption for the exercise of the powers by the Court of Wards. How the existence of such an assumption militates against the principles of this Bill I have not been able to follow.

Then, his next point was that there was no assurance in the Bill that the creditors would get fair treatment. My answer is that there is no presumption either in law or in fact that the Court of Wards will be unfair to the creditors. When the Court of Wards takes charge of an estate, it does so with the intention of paying off the creditors. Why should we assume that the Court of Wards will be unfair to the creditors? If we do not make that assumption — —

Mr. W. H. THOMPSON: May I rise, Sir, on a point of personal explanation? My point was that there was nothing in the Bill by which the creditors would be consulted or would have an opportunity of making known their wishes

The Hon'ble Sir BROJENDRA LAL MITTER: Sir, I was coming to that, but these two points are linked together, and I shall deal with them both.

As regards consulting the creditors, so far as I know, creditors are in fact consulted; not formally at a meeting of creditors, but individual creditors are consulted. For instance, it often happens that at a particular moment the Court of Wards is not in a position to pay a creditor whom under the scheme it intended to pay; what happens in a case like this is that the creditor is communicated with and arrangement is made with him either for further time or for paying him a larger instalment the next time or some other arrangement is made. So in fact creditors are consulted. (Mr W. H. THOMPSON: Not in a body.) If Mr. Thompson's point is that the creditors in a body should be consulted as in the case of insolvents, then, the Court of Wards would become a trustee in bankruptcy; and then the management would not be by the Court of Wards, but it would be management by the Court of Wards in consultation with the creditors, which will be administration by the Court of Wards. The difference is that the Court of Wards manages the estate, it does not administer it. The difference in law is that management is concerned with paying off debts, but when an estate is being administered, it involves an ultimate distribution of estate. What the Court of Wards does is this: So long as it is in charge of the estate, it manages the estate; when it releases it, it releases it to the proprietor, but it does not administer the estate in the sense the Court of Insolvency or the Civil Court administers an estate. In management you cannot bring in an outside body to interfere with it, but in administration it is necessary to consult those who are

interested in the ultimate distribution. Therefore, so long as it is only management which is entrusted to the Court of Wards and not ultimate distribution of the estate you cannot admit the interference of creditors though, as I said, informally individual creditors are always consulted. Sir, if Mr. Thompson did make a suggestion in any part of his speech that the Court of Wards should assume the functions of an administering Court, then to that there are various objections both on principle and on technical grounds. The technical objections are that the Court of Wards has not the machinery for administering as the Court of Insolvency or the Civil Court has. The machinery it has got is only intended for management. Secondly, it will require an amount of technical knowledge which the Court of Wards is not expected to possess. The Court of Wards is after all a revenue authority, good enough for management. But in administration various technical questions of law arise for which technical knowledge is necessary. For instance, intricate questions of priority come in—marshalling, contribution and various other questions for which technical knowledge is necessary. The Court of Wards as constituted does not possess the technical knowledge, nor does it possess the machinery for administration. It is a matter of policy whether the Court of Wards should be a sort of Civil Court administering an estate, whether solvent or insolvent, and exercising the functions of both these Courts. This is a big matter of policy which is not involved in the present Bill.

Mr. Thompson suggested that the Court of Wards should be a trustee for the creditors. Well, Sir, I am in agreement with him on this point and, in point of fact, the Court of Wards is a trustee for the creditors. The rules for the guidance of trustees apply with equal force for the guidance of the Court of Wards in managing the estate. There is no difference between Mr. Thompson and myself on that point. But in law there is a good deal of difference. A trustee is one in whom an estate is vested. He is the legal owner. In this case the Court of Wards merely manages; it is not the owner. If you introduce the principle of the law of trust into the Court of Wards administration, that will be changing the whole structure of the Court of Wards Act. Within the existing structure you cannot bring in the legal incidences of trusts and trustees.

The next point he made was that 4½ per cent. interest was not guaranteed by the Bill. Mr. Sachse has answered that. There is no guarantee of anything here not even of Government revenue, but under section 48, a modification of which I have proposed in this Bill, 4½ per cent. takes a high place, and the chances are that if the Court of Wards gets breathing time interest will be paid in all cases. That is, Sir, the explanation why no statutory guarantee has been provided.

The last suggestion which Mr. Thompson made was that the Court of Wards should constitute itself a Court of Insolvency, realise all the

assets and distribute the assets according to the law of insolvency. To that I made my remark in moving my motion. I shall be quite prepared to discuss in Select Committee the means of distribution, but what the precise method would be, I am not in a position to say now, but whatever suggestions Mr. Thompson may make they will be carefully considered. I have indicated to him a particular method which appeals to me, and if he agrees, well and good. If not, if a better method can be suggested, I see no reason why the Select Committee should not adopt it.

I want to refer to another point which I did not mention in my opening speech. That is in a clause of the Bill we have provided that in calculating the period of limitation applicable to an application for the execution of a decree or order, the time during which the execution of such decree or order was barred under this sub-section, shall be excluded. It has been suggested that this exclusion should be extended to suits as well. On principle, I see no objection to that and if an amendment like that is suggested in the Select Committee, I see no reason why Government should not accept it.

Then I come to Dr. Sen Gupta. His criticism was mostly general criticism, more on matters of policy than the principles of this Bill. He made the remark that Government wanted a free hand to the detriment of the creditors. Government wants nothing of the sort. As I explained Government wants not a free hand, but some breathing time to manage the estate, not to the detriment of anybody, but for the benefit of the creditor and proprietor as well. The next point is that assets may deteriorate in five years. On the other hand, they may appreciate in value also. That is entirely speculative. I hope we have touched the bottom of the depression; I hope that in the next five years estates will appreciate in value, but if estates do depreciate in value, so much the worse luck. That is speculation, and I do not want to indulge in speculation. Dr. Sen Gupta's other criticism was that this Bill was not comprehensive enough to reconcile all anomalies. Mr. Sachse has already answered that question.

Coming to Khan Bahadur Momin, his principal criticism was that the protection of any class of *zemindars* was unjustifiable on principle. I do not agree. In my submission, protection to any class of His Majesty's subjects should be justified if circumstances so demand, and in the view of Government the existing circumstances do demand that protection should be afforded to the estates which are being managed by the Court of Wards. Then his next criticism was why should creditors be kept out of their money for a long time. At a time of depression all have to suffer. All we propose is that the detriment or prejudice should be spread over in such a way that it should not be suffered only by the debtors, but partially by the creditors also.

And what is the prejudice of the creditors? It is not defeat of their claims, it is not reduction of their claims, but merely suspension of their claim for a short time. I have already submitted that when occasion demands that is inevitable. When a debtor goes into the Insolvency Court and gets protection, the creditors do suffer detriment of their full rights. When the Court passes an administrative order their rights are instantly suspended. In society, circumstances do occur when an innocent party has to suffer some detriment to his full rights, and that is inevitable. Khan Bahadur Momin's last point was that landlords whose estates were being managed by the Court of Wards were improvident people who incurred debts by mismanagement, and so on. That is not so. As a matter of fact, Mr. Momin ought to know that the estates which are being managed by the Court of Wards are mostly estates of minors and women and mental defectives. Estates of some disqualified proprietors have been taken charge of not merely in the interest of those proprietors, but in the public interest also. Therefore, his criticism is unjust.

Sir, I do not think it necessary to deal with Mr. Banerji's incoherencies. I oppose the motion for circulation.

Mr. S. M. BOSE: I move that the question be now put.

Mr. PRESIDENT: I propose to put Mr. Thompson's motion for two reasons. One reason is that the mover of the other motion did not make any speech; he formally moved it. The other reason is that the debate centred round Mr. Thompson's motion. The two motions are identical though different dates are mentioned. So, my choice will harm no one.

Mr. Thompson's motion that the Bill be circulated for the purpose of eliciting opinion thereon by the 30th January, 1936, being put, a division was taken with following result:—

AYES.

Ahmed, Khan Bahadur Maulvi Emaduddin.	Heman, Mr. F. T.
Armstrong, Mr. W. L.	Hoque, Kazi Emdadul.
Banerji, Mr. P.	Lesson, Mr. G. W.
Bannerjee, Babu Jitendralal.	Norton, Mr. H. R.
Basu, Mr. Narendra Kumar.	Rahman, Maulvi Azizur.
Cooper, Mr. G. G.	Sen Gupta, Dr. Naresh Chandra.
Dunlop, Mr. R. W. S.	Steven, Mr. J. W. R.
Fazlullah, Maulvi Muhammad.	Thompson, Mr. W. H.
Guthrie, Mr. F. C.	Walker, Mr. J. R.
Hakim, Maulvi Abdul.	Wordsworth, Mr. W. C.

NOES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.	Bose, Mr. S. M.
Dal, Babu Lalit Kumar.	Chanda, Mr. Aparva Kumar.
Dal, Rai Bahadur Surat Chandra.	Chaudhuri, Khan Bahadur Maulvi Hafizur Rahman.
Das, Babu Jatindra Nath.	Chaudhuri, Babu Khetri Mohan.
Basu, Mr. S.	Chowdhury, Haji Badi Ahmed.

Das, Babu Guruprosad.
Ghuznavi, Maulvi Nur Rahman Khan.
Farequi, the Hon'ble Nawab K. G. M., of Ratan pur.
Gilchrist, Mr. R. N.
Gladding, Mr. B.
Graham, Mr. H.
Haldar, Mr. S. K.
Haque, the Hon'ble Khan Bahadur M. Azizul.
Hogg, Mr. G. P.
Hossain, Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
Khan, Maulvi Abi Abdulla.
Khan, Mr. Razaur Rahman.
Maiti, Mr. R.
Martin, Mr. C. H.
Mitter, Mr. S. C.
Mitter, the Hon'ble Sir Brojendra Lal.
Mittra, Babu Sarat Chandra.
Mukhopadhaya, Rai Sahib Sarat Chandra.
Mullick, Mr. Mukunda Behary.
Nandy, Maharaja Srish Chandra, of Kasimbazar.
Nazimuddin, the Hon'ble Khwaja Sir.
Porter, Mr. A. E.
Qasem, Maulvi Abul.
Raheem, Mr. A.
Ray, Babu Khetter Mohan.
Ray, Babu Nagendra Narayan.
Ray Chowdhury, Babu Satish Chandra.
Reid, the Hon'ble Mr. R. N.
Roxburgh, Mr. T. J. Y.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Satiswar Singh.
Roy, Mr. Sarat Kumar.
Roy Chowdhuri, Babu Nem Chandra.
Saadullah, Maulvi Muhammad.
Sachse, Mr. F. A.
Sahana, Rai Bahadur Satya Kinkar.
Samad, Maulvi Abdus.
Sen, Rai Bahadur Akshoy Kumar.
Shah, Maulvi Abdul Hamid.
Sinha, Raja Bahadur Bhupendra Narayan, of Nashipur.
Stevens, Mr. H. S. E.
Townend, Mr. H. P. V.
Woodhead, the Hon'ble Sir John.

The Ayes being 20 and the Noes 54, the motion was lost.

Mr. PRESIDENT: On technical grounds I am going to put Dr. Ghose's motion as well.

Dr. AMULYA RATAN GHOSE: Before that is put, I beg leave to withdraw my motion

The amendment was then, by leave of the Council, withdrawn.

Mr. PRESIDENT: I have now to deal with amendment regarding the personnel of the Select Committee.

The Hon'ble Sir BROJENDRA LAL MITTER: I will accept the motion. We have got 20 and 21 would not make much difference. I am willing to include the name of Mr. R. Maiti.

The question that the Bengal Court of Wards (Amendment) Bill, 1935, be referred to a Select Committee consisting of —

"(1) Mr. W. H. Thompson,

(2) Babu Jatindra Nath Basu,

(3) Babu Sarat Chandra Mittra,

(4) Mr. Narendra Kumar Basu,

(5) Babu Satish Chandra Ray Chowdhury,

(6) Rai Bahadur Akshoy Kumar Sen,

(7) Babu Khetter Mohan Ray,

(8) Raja Bahadur Bhupendra Narayan Sinha, of Nashipur,

(9) Rai Bahadur Keshab Chandra Banerji,

(10) Mr. Mukunda Behary Mullick,

(11) Mr. A. Raheem, C.I.E.,

(12) Maulvi Abul Quasem,

(13) Khan Bahadur Muhammad Abdul Momin, C.I.E.,

(14) Maulvi Abdus Samad,

(15) Mr. O. M. Martin,

(16) Mr. F. A. Sachse, C.S.I., C.I.E.,

(17) Mr. G. G. Hooper,

(18) Haji Badi Ahmed Chowdhury,

(19) Mr. Ananda Mohan Poddar,

(20) Mr. R. Maiti, and

(21) the mover,

with instruction to submit their report as soon as possible and that the number of members whose presence shall be necessary to constitute a quorum shall be five," was then put and agreed to.

The Howrah Bridge (Amendment) Bill, 1935.

The Hon'ble Nawab K. G. M. Faroqui, of Ratanpur, introduced a Bill to amend the Howrah Bridge Act, 1926.

The Secretary then read the short title of the Bill.

The Bengal Agricultural Debtors Bill, 1935.

The Hon'ble Khwaja Sir NAZIMUDDIN: I beg to present the Report of the Select Committee on the Bengal Relief of Indebtedness Bill, 1935.

I also beg to move that the said Bill, as reported on by the Select Committee, be taken into consideration.

Sir, it may be said that the Select Committee have recommended no change of real substance in the Bill unless the changes in connection with the insolvency clause may be regarded as such. But, as is usual on such occasions, I should like to make a few remarks about the more important of their recommendations.

In the first instance, I may refer to the fact that the committee have proposed a change in the short title of the Bill. When they decided that the Bill should be called the "Bengal Agricultural Debtors Bill" it was not because they intended to make any material alteration in the Bill. They decided on the change only because in their opinion

the title "Relief of Indebtedness" was likely to mislead people into the belief that the Bill would deal with the debts of other than agriculturists. The change does not debar anyone from relief who could have hoped to receive it under the Bill as it stood before going to the Select Committee: the Bill dealt then only with agricultural debtors and it deals only with agricultural debtors as it now stands, with one small exception with which I shall deal later.

The next important change made by the Select Committee is perhaps the one which will be found in clause 9(7). It will be remembered that a good deal of criticism was advanced against the Bill as introduced, on the ground that it threatened to destroy agricultural credit: cultivators, it was said, would run into debt recklessly if they knew that they could go before a Debt Settlement Board at any time with a fair prospect of having new debts scaled down; and creditors would be afraid to lend. It was never the intention of Government that this situation should be allowed to arise. The Bill as it stood gave them powers to stop debt-settlement proceedings at any stage, because it gave them powers to abolish Boards: as soon as a Board had accomplished its works of settling debts in any area, it would have been abolished, and no new Board would afterwards have been set up in that area. This was the simplest method of avoiding the difficulty that there is no telling how long it will take to settle the debts in any area where the work is actually taken up or how many areas can be taken up in the immediate future. The alternative method of dealing with the problem, which has been incorporated by the Select Committee in the Bill, is to provide that nobody may apply for the settlement of any debt which he incurs after the submission of an application for settlement of his debts. This will, as I think the House will agree, be an unquestionable safeguard against any such misuse of the provisions of the Bill as is apprehended by certain of its critics.

The Select Committee have been careful to meet another set of objections put forward from various quarters against the provisions of the Bill. Fear has been expressed that the Bill will have a serious effect on the collection of rents. It is alleged in the first place that rents which are in arrears may be recoverable only by instalments spread over perhaps twenty years: and it is, further, suggested that cultivators would gain time whenever their rent fell into arrears by applying for settlement of their debts, knowing that the Boards would delay settlement so long as to make it impossible for landlords to recover anything by suit for perhaps a year or perhaps more. I need hardly point out that the effect of clause 9(7) on which I have already commented would be to prevent debtors from attempting any such trick more than once: In addition, the Select Committee have inserted a proviso, in clause 23(1), that arrears of rent should be paid before any other debts. It is true that Government have come to the conclusion that the proviso to this clause ought not to stand as it is, but

the same result would be attained by a rule, and I have the authority of Government in saying that any rules made regarding the order in which debts should be paid would certainly lay down that arrears of rent should be paid first.

Secondly, it has been urged that clause 20 might be used to force landlords to agree to a reduction of arrears of rent: against this the Select Committee have inserted a definite provision in a separate clause. In the original Bill there was a provision that the principal of any rent should not be reduced, but some suspicion was aroused because this appeared merely in a sub-clause. Government were assured that this sub-clause would be an adequate safeguard; but the matter has been put beyond any doubt by a new clause 21A. In addition, the Committee have added, in sub-clause (*a*) of new clause 23A, a provision that, when a landlord brings a suit for arrears of rent which fall due after an award, he may include in that suit any amounts payable under the award on account of arrears of rent. Next, I would invite the attention of the House to the very important change made in clause 26(*1*)(*a*) by which, when the assets of a debtor are being distributed after a default, the landlord will receive payment of any arrears of rent which have meanwhile fallen due, before any creditor is paid anything. All this means that the landlord will be protected at the time when the award is made, during the continuance of the award and when, or if, the award ceases to subsist. For myself, I am quite satisfied that the landlords have no reason whatsoever to apprehend that the passing of this Bill into law will in any way affect their interests. In the Central Provinces the result of proceedings under their Debt Conciliation Act, 1933, has been to secure for landlords payment of arrear rents before or immediately after any award is made: the same thing may be expected to happen in Bengal. The fact is that the Bill will not work unless rents are paid punctually. The only security which the creditors will have for payments under an award will be the land; and sale of the land after a rent suit will destroy their chances of realising anything. So it will obviously be to their interest to see that the rent is paid in due course, and, therefore, the whole result of an award should be to make the position of the landlord more secure. I may digress here to remark that these safeguards will not in any way injure the interests of the debtor or of the creditor. They merely recognise the fact that under the existing law rent is the first charge on the land.

The committee have made several changes in the clauses dealing with insolvents: these changes will, I think, remove several difficulties which have led to a good many objections. I need not go into details of these changes which are self-explanatory: but I should like to repeat here the reasons why Government are anxious to deal with insolvents in this Bill. They do not want to see a large number of cultivators drift into the position of landless labourers or become, to

all intents and purposes, economic serfs. They want that cultivators who are so heavily encumbered that they have no hope of ever extricating themselves from the burden of indebtedness, who are doomed eventually to lose every bit of land that they possess, should not be turned out from their dwelling house and should have at least some land so that they do not become irresponsible and dangerous agitators always ready to support any movement against the established law of the land. This policy of Government has got the backing and support of the Royal Commissions on Agriculture and All-India Banking Committee. Moreover, most of the leading economists of the province as well as the leaders of Commerce and Industry have advocated some sort of easy and cheap insolvency procedure for the agriculturist of Bengal. The Bill offers some hope to these poor agriculturists but only at the cost of such sacrifices as to be a guarantee that no cultivator who could possibly avoid it, would wish to come within its scope. Provision has been made in clause 9A for the case of joint-debtors. Most of this is merely a matter of machinery, but I should comment on one particular point in this clause. Many people have urged that the Bill should deal with the debts of non-agriculturists; that is altogether impossible without drastic changes in the whole scheme of the Bill, but, in the interests of the agricultural debtor, the Select Committee have included one class of such debtors. When an agriculturist and a non-agriculturist have a joint ancestral debt, a Board might scale it down for the non-agriculturist as well as for the agriculturist; that is because the ancestral land would be security for such a debt in most cases. There was a suggestion that the same principle ought to apply when a joint debt secured on the land was not ancestral; but the line has to be drawn arbitrarily somewhere and this would have opened up possibilities to which there would obviously have been strong opposition.

Other changes to which I would invite the attention of this House are that made in clause 19(*1*)(*b*) and (*c*) by which compulsory settlement will not be possible in regard to secured debts unless 40 per cent. of the secured debts are covered by agreement, or regarding unsecured debts unless there is the same percentage of agreement regarding all the unsecured debts; that in clause 25(*2*) which will save a debtor from having to attempt payment of two years' instalments in one year, and various changes in other clauses which have made it quite clear that all decisions and orders of the Board will be subject to appeal.

Before I sit down, there is one other important point with which I must deal. In his Minute of Dissent Mr. Narendra Kumar Basu has referred to certain remarks which he says that I made to the Select Committee. I feel that unless I take this, my first possible opportunity of explaining the facts, members of the House may be misled. Mr. Narendra Kumar Basu has not stated correctly what I

told the Select Committee. The point which I made in reply to certain queries was this: that Government had not considered any specific proposals for advancing the huge sums of money which would be necessary, according to the advocates of the plan, to finance the settlement of debt in Bengal: I remarked that if Government had waited to legislate until such a decision could be reached on such a proposal there would have been delay which might have been fatal to any hope of conciliating debts. Obviously, the finances of Bengal are not in so satisfactory a state as to enable Government to advance such huge sums from their own revenues; less obviously perhaps, because it seems to have escaped the notice of Mr. Basu is the fact that they cannot borrow such huge sums on the security of their general revenues for any scheme which cannot be guaranteed to show a profit and there is no such scheme here. Incidentally, while I am dealing with these remarks of Mr. Basu, I may mention that we do not accept his general attitude that it is useless to carry on with this Bill unless the Government are prepared to finance the settlement of debts throughout the province. I need only point to the fact that the Punjab, one of the wealthiest provinces in India if not the wealthiest, has made no attempt to put up money for any such object, but has been content to pass a Bill which in essence is the same as our Bill, although I may be allowed to claim that our Bill contains various improvements. That is a sufficient answer to this type of critic. But I would add this, that not a single province in India has yet ventured to accept the suggestion of Mr. Narendra Kumar Basu. The gentlemen who advocate the establishment of land mortgage banks for liquidating the debts of the cultivators do not realise that any general scheme of this character will deny relief to the majority of the agriculturists in Bengal. Once the principle of land mortgage banks is accepted, then the advance to the cultivators will depend solely on the income from their land and I submit that on that basis either the creditors will have to forego most of the money due to them or the agriculturists will be given no relief because their income from the land will not be sufficient security even for the scaled down debts. Anyone who has any knowledge of the agriculturists of Bengal knows that the paying capacity of the tenant is very much enhanced from his subsidiary incomes which cannot be taken into consideration by the land mortgage bank. The obvious example is of the cultivator who has got two or three grown-up sons who add to the family income by working during off season. I, therefore, submit to this House that even if Government had considered the question of establishment of land mortgage banks, they would have found that very few people would have been entitled to relief from it. On the other hand, this scheme enables 99 per cent. of the cultivators to get their debts reduced to an extent which they can repay within a limited period. Whatever our opponents may say, Government have done better than adopt a scheme for advancing money; they

have adopted a policy which has actually put money into the pockets of the cultivators, that is, of the debtors whom this Bill is designed to help. No one can deny that the price of jute, in the mufassal, has been far and away higher this year than it was last, or that the cultivators have got the benefit of this higher price. People may say that, but for the accident of the war in Africa, the price would not have been so high: but, be that as it may, I defy anyone to say sincerely that if there had not been restriction of the acreage under jute, there would have been this increase in the jute prices—war or no war. Calcutta speculators have doubted the reality of the restriction; the cultivators who should and who do know the facts have not doubted it. And if anyone thinks that the experiment of debt settlement is doomed to failure for lack of a certain amount of ready cash in the villages, I would ask him to make a simple calculation: let him take the difference between this year's prices of jute and last year's and multiply it by this year's forecast for Bengal: that ought to silence him. There can be no doubt in this matter; the Bill is not a forlorn hope; it will be passed at a moment when events promise it every success.

With these words I move my motion.

Mr. P. BANERJI: Sir, I beg to move by way of amendment that the Bill be recommitted.

In doing so, I must first point out some fundamental defects in this Bill. We have noticed that the Hon'ble Member is always optimistic in his attempts, whereas we on this side of the House have this experience that one after another of his pet children—I mean the Bills passed by him— have all proved to be dead letters. There is no doubt, Sir, that the present Bill will also meet with the same fate. If we scrutinize the Bill carefully, we find in the admission of the Hon'ble Member himself that no sooner did he shift from this place to Darjeeling he found it necessary to change the very name of the Bill. Because he told us that the Bill meant relief, he automatically changed the words "Relief of Indebtedness Bill" into "Agricultural Debtors Bill." And it further appears from his speech to-day that this relief may be temporary relief, but I do say that it will mean no relief at all. He was just saying that the remark made by Mr. Narendra Kumar Basu, the leader of the opposition, that Government did not mean to advance any money was misleading. But the argument he has put forward in so many words amounts to the same thing, viz., that Government will not advance any money. On going through the whole Bill as it has been ill-drafted and ill-conceived from start to finish, we find that there is no machinery provided for carrying out debt clearance. In passing the Hon'ble Member suggested land mortgage banks; but he knows full well that such banks have

only been established in five places. Then what will these banks do? The Government acknowledges that the loan is a huge one and it is not possible for the Government to handle it as Government is already bankrupt. The fundamental defects of the Bill appear to be—(1) there is no adequate organisation for carrying out debt clearance provided in the Bill, (2) secondly, no agency has been provided like the co-operative credit societies or land mortgage banks to make cash advances to the debtors in order to pay off the debt as compounded, either in whole or in part, (3) thirdly, no provision has been made to ensure payments of instalments or of current rent in default of which the holding is liable to be sold—on all of which the whole object of the Bill will be frustrated. So, as I have said, the Bill has been very badly drafted and the provisions are very confusing. I think there should be proper arrangement and classification of matters as well as a clear enunciation of principles. In section 7, Sir, we find that there is absolute jugglery of words. Why not say clearly what are the different kinds of Boards it is proposed to establish, dividing them into classes and clearly enumerating their powers.

The Hon'ble Member in charge has just pointed out that if 40 per cent. of the creditors agree, then the rest of the creditors will be compelled to agree provided the Board thinks it reasonable. Don't you, Sir, think that it is an absurd proposition to accept the minority rule, as we know the majority rule obtains everywhere and we fail to understand why the Hon'ble Member proposes that the minority rule should obtain here.

Now, Sir, although the argument put forward by the Hon'ble Member seems to show that the Bill will give temporary relief to the debtors, I think there will be no permanent solution of the problem whatsoever. As I was just tempted to say that the name of the Bill instead of being the Relief of Rural Indebtedness should have been the Bengal Breach of Rural Tranquillity Bill—that would have been the more appropriate title for it. Knowing what will be the position, the Hon'ble Member is still pessimistic and does not think that the creditors who advanced money will lose. In some cases they may be able to compound their claims, but there is no definite percentage mentioned in the Bill. The Bill is not definite on this point—in fact, nothing is mentioned in the rule-making powers. In section 23 we think certain broad principles should have been laid down as regards the maximum extent of reduction and the maximum period of payment by instalments. But nowhere in the Bill these principles have been laid down. There is no qualification given of the Chairman nor of the members—nothing whatsoever. In fact, the Hon'ble Member wants us to give a blank cheque in favour of the Government; that is absolutely the whole position. I do not know whether it is the Hon'ble Member's ambition to give by this Bill relief to these people,

and he seems to think that it will be something like a magic wand, because it will not harm anybody and automatically it will work miracles, just as his other Bills have worked miracles. We know that the people in the decadent areas, in spite of payments, are not getting any water and are crying for water. In view of that, it is to be considered whether discretion should have been left to the Executive Government. If we look further ahead, we shall find that the whole rural credit system will be hopelessly disorganised. You cannot expect the people who burnt their fingers once will do so again and advance money. Already the peasantry in the whole countryside—the money-lenders and others whom the Hon'ble Member intends to benefit by introducing this Bill—are afraid that the result will be absolute chaos and disorganisation of the whole rural credit system.

The Hon'ble Member has said that the Government of the Punjab has done it. The Punjab which was mainly a desert country has become the wealthiest by the anicut system in its rivers. We all know how water stagnates at the mouth of the Ganges, but it is due to the action of this Government or rather the inaction. It is on account of this that the people of this country has been reduced to the present deplorable position. So it is no credit on the part of the Government to say to-day that it has done a miracle at the expense of the people. In 1913 or before that, we know that certain parts were prosperous. But what is the position to-day? The position last year was that wheat was selling at Re. 1-4 per maund—it dropped from Rs. 5 to Re. 1-4. The Hon'ble Member made a misleading remark in telling us that the buying capacity of the people has enhanced by propaganda carried on by Government. May I enquire what propaganda? We know what has been the result of the jute restriction propaganda. We asked questions in this Council last session and from the facts elicited we found that the result was not satisfactory. I travelled recently through the Mymensingh district and the Rajshahi Division, and I noticed what the conditions were there. I found that jute was selling in the months of September and October at Rs. 3-4 per maund and in some cases best jute was selling at Re. 4 per maund. I know some members of the Government will repeat that the price of jute is Re. 6 per maund—perhaps there is no tap on the mouth of the members and they can say anything they like, perhaps they dreamt it in their dreams. I think the jute restriction propaganda was an absolute failure. I wish it were a compulsory restriction scheme based on the lines of the tea restriction scheme. But the Government did not do it, but merely wasted money on propaganda. If the Member in charge knew the conditions of the cultivators in the countryside, I think he would not have made such a statement that their buying capacity has increased. There may have been a little enhancement in the price of things here and there,

but it does not matter much. Even the cultivators are not getting what they spend. All that we find is that in every Bill there is always something against the money-lenders, i.e., the people who advance money in times of dire necessity. It is because the people who borrowed money and who allowed their debts to multiply that they should be protected. It has been suggested by some of the members of the Treasury Bench that it is the duty of Government to protect the people who borrowed money. I think it is equally the duty of Government to look to the interest of the people in general. I maintain that no relief should be given to one community at the expense of the other. Therefore, I consider that Government should have started a machinery or an organisation from which at least credit could have been given to the people in the countryside, but nowhere in the Bill such a provision is proposed. Therefore, I think it will mean immediate ruin to the creditors, and to some extent to the landlords.

Now I come to the other aspect that the Bill will disorganise the rural economic system and cause an economic loss to the country. I would ask the Hon'ble Member what he is going to do in the case of non-payment of rent. For failure of payment of rent the land will be sold. All that he will do is to ruin one set of people and for the time being give a little relief to the other. That is no real relief, because ultimately the people will suffer. Unless Government come forward for an adequate organisation, no good purpose will be served. If that is not done, what useful purpose will this Bill serve? I think the object of the Bill is to make a propaganda. On the eve of new election—to regain the lost prestige. If I am allowed to say the Primary Education Bill was passed in this Council after a good deal of propaganda but nothing absolutely has come out of it——

Mr. PRESIDENT: What are your reasons for recommitting this Bill to Select Committee?

Mr. P. BANERJI: Sir, I am stating the fundamental principle on which the Bill should be recommitted to Select Committee.

Now I will mention some of the defects of the clauses. I have now discussed so far about the fundamental defects of the Bill. I have replied to all the defects in the Hon'ble Member's points in support of his motion, and the only thing he had done was to praise himself because he thought Government have done better. What Government has done so far I do not know. Of course, we accept that from the Hon'ble Member. He must defend what he proposes. One thing he said was that he has not included in this Bill all the

people in general, but only those who are out of pocket. In the case of agricultural property he said that if one person is agriculturist in a family then other persons are——.

Mr. PRESIDENT: Please confine your remarks to your motion. You have not yet suggested the steps which you want the Select Committee to take.

Mr. P. BANERJI: I have already stated what are the defects in the Bill and now, Sir——.

Maulvi SYED MAJID BAKSH: Perhaps his grounds are for re-committal and redrafting of the whole Bill in favour of the creditors!

Mr. P. BANERJI: Not at all. In conclusion, I would only say that it is an ill-conceived Bill from start to finish. It will be an utter failure. The whole Bill should be recast, before it is presented to the Legislative Council for consideration.

Babu SATISH CHANDRA RAY CHOWDHURY: Sir, it is idle to deny that this Bill has raised keen controversy all over the country. In fact, since its introduction in the Council there has been a feeling in some section—and not a very unimportant section—of the public, akin to the feeling which arises in our minds during a violent earthquake when terra firma under own feet appears to be no more firm or reliable as a resting place than empty space—a feeling of extreme uncertainty as to what is going to happen at the next second or moment.

This is a feeling which is so very opposed to the feeling of confidence and trust with which people living under a civilised and orderly Government goes about their business, because they are certain that the transactions concluded and legal relations established on the basis of existing laws will not be disturbed easily and violently—such an assurance the savage man living under an uncivilised Government has not got.

The feeling I assure you, Sir, is there. The question is whether this feeling is absolutely groundless or whether the Government ought to take note of this feeling—as being a genuine feeling of apprehension in not an inconsiderable section of the public.

If we look to the opinion as expressed by public bodies and important individuals and forwarded to the Government and published by Government for our enlightenment, we find that not even 5 per cent. of the opinions lend their support to the Bill and those that do, do so in a very qualified manner.

Sir, in a matter involving such complex economic problems, it is not only the quantity which ought to tell but quality as well. In this matter questions of village economic structure, questions of legal relations between citizen and citizen, and serious and far-reaching socio-economic problems are all mixed up. Can anybody have the hardihood to deny that on these questions the opinions of the Bar Associations of this province which represent all interests and which are unanimous in their condemnation of the Bill are not entitled to any weight? Can anybody have the cheek to deny that the opinions of the Indian Merchants' Chambers and Associations in Bengal have a right to be heard on this question? The consensus of opinion expressed by them are against the Bill—the most notable contribution being made by the Bengal National Chamber of Commerce.

Even the Bengal Chamber of Commerce which cannot claim to have that intimate knowledge of our rural economics as the Indian Chambers can claim, opines that the measure can be justified only as an emergency measure and its life ought to be short.

The Muslim Chamber of Commerce, a comparatively younger body, have shown a better grasp of the village problem than the Government by pleading for the artisan, the shopkeeper and daily labourer as being more in need of help than the agriculturists.

The Bogra Zilla Proja Samity has touched the crux of the problem by stating in a solemn resolution that the middle class people of Bengal should be included in the definition of debtor. I thank that body—the Proja Samity of Bogra—for showing such wonderful insight into the core of the whole economic situation and of the socio-economic problem.

Maulvi SYED MAJID BUKSH: That will be terra firma.

Babu SATISH CHANDRA RAY CHOWDHURY: Yes. If my friend will have patience, he will see I am not speaking against the agriculturists' interests. The interest of the agriculturists are as much in my heart as it is in the hearts of the hon'ble members of the House. The question of all questions is that there is the other side of the picture which I have got to look to for the relief of the agriculturists. I believe they are at the bottom of the whole structure, and if the agriculturists fail, the whole structure is bound to come down. The prosperity of all classes depends on the prosperity of the agriculturists. But the problem is not so easy. The problem of the economic structure of our rural life is a thing on which the interests of all classes are dependant.

Now, Sir, in adjusting our economic machinery to the needs of the times all classes and sections should be included, in our view. I

[illegible] to tell this House, so that my position may not be misunderstood, that I am myself more of an agriculturist than anything else. My tastes, my interests, are the same as those of my agriculturist neighbours. And as a man with some perspective into the future of the country and as a man who has never placed self-interest above the interests of the people at large, I have no hesitation in declaring my own belief that agricultural prosperity and the agriculturists' well-being is the very foundation on which we must build all our hopes of the future. The prosperity of all the other classes must ultimately rest on the prosperity of the agriculturists.

When I say this, however, I present only one side of the picture. The other side cannot be ignored with the safety of the agriculturists themselves. The whole economic structure of our village life is so interdependant that you cannot sacrifice totally the interests of one component part without upsetting the whole to the ultimate ruin of the very class whose interests we have all so much at heart.

I know in times of great revolutions—as the one which gave birth to Red Russia—the whole economic fabric was torn to pieces and the foundation of the economic structure was destroyed totally. I am not concerned here with the effect of such revolutions. It may be good, bad or disastrous. There they write on a clean slate and everything is adjusted to one central idea, and no impediment is allowed to stand in the way of a new experiment.

What, however, I would remind the House is that we are yet very far from a revolution of that type and many of us would probably like to remain very far as long as they can. Of course a revolution may be sometimes hastened by hasty and ill-advised legislation. Here you have to fit in things to the existing structure —structure which has existed for long centuries. You are trying to take out one part of the machine and improve it to the total disregard of the question whether it will ultimately fit in to the whole machine or not. That, Sir, is not the scientific method and that, Sir, is not the practical way of doing things.

I will, Sir, now proceed to state my objection to the Bill as reported by the Select Committee and the remarks I have made have got to be borne in mind in judging the merits of the Select Committee's report.

My chief objection is that it has changed the whole colour and complexion of the Hill by confining it to the agriculturists alone as the very change in the title goes to show.

To quote, Sir, the resolution of the Bogra District Proja Conference and the Muslim Chamber of Commerce, the middle class, the artisans, the petty shop-keepers are as much and more in need of relief than the pure agriculturists.

The middle class people forms the real link as the very name implies between the man with the plough and the man or the Government at the top. Not only that the Bill does not give any relief to them which might well be tolerated, but in some cases their exclusion from the plan of relief will mean their utter ruin and extinction.

In our part of the country there is no defined body of people who may be called money-lenders by profession so that this defined body of people might be left severely alone to eke out for themselves. In fact, the majority of our so-called money-lenders are money-lenders more by compulsion than by choice. Middle class people living in the midst of the agriculturists had not unoften in the past to lead their credit to borrow money for the agriculturists to help their neighbours. Such people are to be found both amongst Hindus and Muhammadans. The rest of the members of this class depended on the sanctity of British laws when they entered into business relations with their neighbours.

The effect of the adoption of the principle of the Select Committee's report will be that this class of people, the real connecting link, the real backbone of the economic structure, will be ruined altogether as they cannot avoid their own debts while debts due to them are deferred. I will quote, Sir, Mr. Thompson who said yesterday that Government "ought to be the trustees of the debtors as well as the creditors." That was when we were talking of the Court of Wards. The principle ought to apply in every case and should apply in this case also.

The only way the Government can meet the situation is by finding money by floating debentures, etc., to liquidate this class of people and save the classes below them. In fact, it was once expected that the machinery of the land mortgage banks was aimed at that ultimate result. But unfortunately many of our institutions ushered in the midst of great acclamations breakdown half-way. Probably that is the fate with our land mortgage banks in the credit societies. My second objection is that the spirit of compulsion and threat runs through the whole Bill as reported, although the Boards are to be called Boards of Settlement. The crowning achievement of the Select Committee is the retention of clause 20. If the Bill is worked in this spirit of compulsion, then we are in for another class war in the near future to fill the cup of our miseries and to increase the divisions which are already too many. Then, Sir, the Select Committee have left us in the greatest uncertainty as regards the composition of the Debt Settlement Boards.

Important questions of law involving the Transfer of Property Act, and other laws will come up not unoften and yet lawyers are excluded rigorously and the members of the Board need not even have a smattering of law. Will the Boards be a replica of the Union Boards is a

question which is being put to us from many quarters. Well, if they are, I will ask the Government to read their own report on the Police Administration in the Bengal Presidency, page 12. Will not the mischief in this case, as affecting the administration of justice, be much greater and more extensive if the Boards are guided and controlled without judicial experience and assistance of lawyers?

It should be noted, Sir, that here the possible mischief is not only to creditors but to debtors as well.

Many would face even these drastic provisions of the Bill with greater confidence if the decisions were left to the ordinary Courts with such changes in the procedure as to ensure speedy disposal. But, I forget, Sir, that we are in for a time when ideas of law and jurisprudence will be replaced by whims and caprices of individuals.

Another principle which has been retained in the Select Committee's report is that henceforth the decrees of Civil Courts, aye, even composition decrees, will not be binding on the Settlement Boards and at any stage, conceivable and inconcievable, the hand of the Civil Court may be stayed whenever one party to the contract desires to checkmate the other party. This stinks in our nostrils; this is revolting to our sense of justice and fair play. I protest against this naked attack on the principles of civilised jurisprudence, and this violent shaking of the very foundation of the system of justice to which we have been so long accustomed. It seems to me, Sir, that here the two extremes of political ideas in the country are coming to meet.

The finality of decisions of the Boards is another evil which is embodied in the report with a very slight exception in favour of an appeal to an officer about whose qualifications we are entirely in the dark. The healthy check which at present exists on our Courts of Justice even is thus entirely withdrawn.

Then, Sir, the retention of section 20 is an outrage on our common sense, not to speak of the legal sense.

The Insolvency Chapter is a puzzle to us. We do not know whom it is going to benefit. There is nothing like it in the Punjab Act or the Central Provinces Act. Are all oddities and absurdities in litigation to be reserved for Bengal?

I will, Sir, not deal with the details at this stage, but I want to mention one other aspect of the Bill before I close, namely, the wide rule-making powers reserved to the executive. A glance through clause 46 will show that in a vital matter like this the Executive Government is intent on retaining in its own hands virtually powers of legislation. The different items in the clause are so beautifully vague that they would support anything the Government may do in the name of the law.

Sir, when will the Government learn that even they are not infallible and that the spirit of the time will not support their arrogating all powers and responsibilities to themselves in the way they are doing by this Act.

For all these reasons, which I hope will appeal to all classes in this House, I support the amendment for a recommittal of the Bill.

I appeal to all groups in the interests of all parties who have been connected with this Bill and those who have not to support me.

Mr. PRESIDENT: Order, order. The Council stands adjourned till 3 p.m. to-morrow.

Adjournment.

The Council was then adjourned till 3 p.m. on Wednesday, the 27th November, 1935, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Wednesday, the 27th November, 1935, at 3 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHOWDHURY, of Santosh) in the Chair, the four Hon'ble Members of the Executive Council, the three Ministers and 87 nominated and elected members.

STARRED QUESTIONS

(to which oral answers were given)

Howrah Bridge.

*4. **MUNINDRA DEB RAI MAHABAI:** (*a*) Is the Hon'ble Member in charge of the Marine Department aware that there is a feeling of apprehension amongst the public about the present condition of the Howrah Bridge?

(*b*) If the answer to (*a*) is in the affirmative, will the Hon'ble Member be pleased to state whether the Government made any enquiries about the condition of the bridge?

(*c*) Are the Government considering the desirability of issuing a communiqué on the subject to allay public apprehension?

MEMBER in charge of MARINE DEPARTMENT (the Hon'ble Sir John Woodhead): (*a*) No.

(*b*) A thorough survey of the bridge was made in 1932 and all the repairs considered necessary to make the bridge fit for a further eight years' service have been carried out. The public has no cause for apprehension.

(*c*) No.

Babu JITENDRALAL BANNERJEE: With reference to question (*a*), is the Hon'ble Member aware that a newspaper which is very much in the confidence of Government, periodically seeks to make a sensation in the matter and spreads rumours of an alarming character?

The Hon'ble Sir JOHN WOODHEAD: No, Sir.

Babu JITENDRALAL BANNERJEE: Is the Hon'ble Member in the habit of reading the "Statesman"?

The Hon'ble Sir JOHN WOODHEAD: Yes, Sir; I was thinking of referring to it, but I did not because Mr. Bannerjee's question referred to newspapers in the confidence of Government.

GOVERNMENT BUSINESS

LEGISLATIVE BUSINESS

GOVERNMENT BILLS.

The Bengal Agricultural Debtors Bill, 1935.

Rai Bahadur SATYA KINKAR SAHANA: Before submitting my reasons for recommittal, Sir, I should like to say a few words to avoid any misunderstanding of the situation. I have every sympathy with the object of the Bill. I firmly believe that the improvement of the province mainly depends on the improvement of agriculture, and that the improvement of agriculture depends on the improvement of the agriculturists who are heavily indebted. If the intention of the Bill is to improve the condition of the province, then the indebtedness of the agriculturists should be removed. But I am sorry that the measures adopted in the Bill are defective, though it was conceived in a noble spirit, and in spite of the tender care bestowed on it by the Select Committee, it is still defective. To say the least, the Bill is illogical, inequitous, illegal, drastic and short-sighted. It is illogical and if there is any logic in it, the well-known logic of makor dokor prevails in it. There is one procedure for the creditor, and another for the debtor, but we all expect that there should be one law for every one of us. This discrimination in the law has been the undoing of many administrations in the past, and I cannot understand why there should be a discrimination between creditors and debtors. As regards the drastic nature of it, some of the provisions are very drastic and self-contradictory. The defects must be removed, and that is one of the reasons for recommittal. The second reason is that the opinion of the public was sought in haste and that only 65 opinions of individuals and public associations have been placed before us. Out of that 60 are decidedly against the Bill. Five have supported the Bill in a lukewarm way. Then it is a partial Bill; the indebtedness of the agriculturists only

was going to be touched by this Bill—a part of the indebtedness of the agriculturists and not the whole of it. Then, Sir, many laws existing at present are going to be abrogated by this Bill. We do not know the persons who would be the members of the boards when formed; perhaps there will be some of the members of the union boards, and they will have power to ignore some of the decrees passed by the civil courts, and even by the High Court. Under the circumstances, I think the opinion of the High Court should have been taken, and I do not know whether that has been done. At present the Bill is of such a nature that it is apprehended that it will dislocate or rather clash with the credit system in rural areas. The report of the Select Committee, as we have got from the Hon'ble Member, has not made any substantial changes, but we want substantial changes to be made. The Select Committee has not been able to relieve the Bill of its bitterness, and its result suits the well-known saying—

শর্করা শতভারেন নিম্ববৃক্ষ উপার্জিতঃ।
পয়সা সিঞ্চিতো নিত্যং নিম্বঃ মধুরায়তে॥

This means that even though a Neem tree is planted on a soil on which a hundred maunds of sugar has been put and though it may be irrigated every day with milk, it will not be deprived of its bitter taste. The Select Committee looked into the thing from a wrong angle of vision, and perhaps a few months' time will make their vision right, because I think it was due mostly to the ignorance of the actual state of things in rural areas when the Bill was drafted. This Bill, as it is, is going to set the agriculturists against the landlords, and the debtors against the creditors. In this world, everyone knows that money is power, and the landlord and the creditor are more powerful than the agriculturist and the debtor, and the result will be a state of war, which no one at all desires to happen, in which weaker one is apprehended to go to the wall.

The thing is that the nature of the Bill must be changed, and that a change only in the embellishments and decorations will not change its nature. As the poet says—

কাকস্য চক্ষু যদি স্বর্ণযুক্তা মাণিক্যযুক্তৌ চরণৌচ তস্য।
একৈক পক্ষে গজরাজমুক্তা তথাপি কাকঃ ন চ রাজহংসঃ॥

We do not want the Bill to be like the crow which is an ominous bird, but we want it to be like the swan, and these are the reasons for my supporting the motion for recommittal.

Mr. PRESIDENT: Then all that you want the Select Committee to do is to metamorphose their black crow into a white swan. (Laughter.)

DR. NARESH CHANDRA SEN GUPTA: I have listened carefully to the speeches of the previous speakers, but I have not been able to find one single reason for recommittal of the Bill. Mr. Bannerjee complains that the Bill contains no provision for financing the schemes for the payment of debts. As a matter of fact, I am personally of opinion that Government must devise some means for organising the finance for the purpose of making this Bill effective, but that has been left out of the Bill. I should have been happy if something could be done in this Bill for the purpose, but it has not been done. Although we have 750 amendments proposed to this Bill, no member of this Council has given notice of an amendment for the purpose of making a provision to that effect. Sir, this very fact, I suppose, will satisfy the House that there is not much behind this suggestion. It has been said that the Bill is a confused and ill-drafted one. If it is, we can expect that it should be set right in this Council. It has further been said that this Bill provides no permanent solution of the problems. The Bill never suggested to make a permanent solution, and as a matter of fact nobody thinks of providing a permanent solution by a Bill of this character. Any way, none of these are the reasons for recommitting the Bill. Mr. Satish Chandra Ray Chowdhury has referred to opinions received. He made a trenchant attack on the principles of the Bill,—principles which should be taken into consideration during the first reading of the Bill or should have been reserved for the last reading. However, that is no ground for recommittal. He has not inicated how by recommitting the Bill, the Select Committee could produce a Bill in which all the obnoxious provisions would be obliterated. Mr. Sahana has also referred to the enormous body of opinions that have been received, and he says that 60 out of 65 are against the Bill. If these 60 opinions are to be given effect to, the Bill ought to be thrown into the river Ganges. If the Council is of the same opinion, they can do it when the Bill comes for final decision. Taking all these opinions into consideration, I find that the 60 opinions which are against the Bill, are based upon a radical misconception of the Bill and its provisions. I have carefully scanned them to see if they furnish any indication that the authors of those opinions—persons who have sent the letters,—had understood the meaning, and I have found that—I have not counted the percentage—in the vast majority of them, there have been great misapprehensions. For instance, at least in 50 out of the 60 opinions, it has been said that the interests of the landlord have been jeopardised. Sir, there is no such thing in the Bill. I do not want to trouble the Council at the present moment by going into the provisions of the Bill; I have got my own ideas regarding some of the provisions, and possibly I shall have to speak on some of the amendments, but for the time being, we are concerned with the question of recommittal. I am sure, Sir, recommittal would not improve it.

Sir, I do not want it, however, to be understood that I think that the Bill by itself is a panacea for all the evils from which the agriculturists suffer. It is only the first step. Unless you can relieve the agriculturist of his enormous burden of debt, which is ruining him, nothing can be done, and in that direction, this is only the first step, and this will have to be followed by what I might call an aggressive agricultural policy on the part of Government for putting the rural finance and rural economics on a sound basis. It will have to be followed by an organisation of the credit system and by the organisation and rationalisation of agriculture on some definite principles. Unless that is done, this Bill will not be of any service to the agriculturists for good or even for a long time. The fundamental defects in the land system of Bengal and in the entire rural economics of Bengal, make it impossible for the agriculturists to make them stand on their own legs, and these defects will have to be remedied.

Sir, it has been said that the Bill by itself does not mean to do anything. Certainly it does not. It is a Bill which enables Government to do a great lot, and it is a Bill which Government might also put on the upper shelves of their libraries and do nothing. It all depends on the condition whether Government want to deal with agricultural indebtedness in a spirit of seriousness with the intention of removing the present evils and of placing the system of rural finance and economics on such a basis as would ensure the distribution of the wealth of the country on sound lines. For one thing, Sir, I am satisfied that until some means are found for financing the schemes which will be framed for the liquidation of debts of agriculturists, not much will be done. Mr. Narendra Kumar Basu was not right in saying that it would be absolutely illusory, and that nothing would be done. Something could be done even without finance. But a great deal more could be done if the schemes could be financed. I do not certainly expect that Government will find all the money that is needed for the repayment of all the debts, but Government might think of organising the resources of the agriculturists in such a way that a proper security could be furnished for their getting agricultural loans as well as for the repayment of their debts. For instance, Government can, by the exercise of their executive powers, make a recommendation to the Boards that, whenever possible, when they make schemes, they should try to frame them in such a way that while the debts are repaid, they should see that the agriculturists have sufficient income to repay them. And when that position has been reached, these debtors who have been dealt with by the Boards might be formed into a new kind of co-operative societies—societies which would finance them on the hypothecation of their crops, and when the crops are gathered, the societies would sell them, and repay in the first place their rents and taxes, in the second place the instalments of loans payable, and in the last place apportion the balance out of the credit to the tenants. If co-operative

societies on these lines are started on a large scale, enormous consequences will follow. By doing this, you will be placing the finances of the agriculturists on a sound basis, you will be providing a system of joint marketing of their produce, and last, though not the least, you will be providing a means by which the agriculturists will be able to know what crops they can grow with profit, because these co-operative societies will be able to dictate to the cultivators the crops they should cultivate on particular lands. In this way, the organisation of such co-operative societies would be a means for improving considerably the financial position of the country. I would entreat Government to consider these proposals seriously. When we have such agricultural societies, the question of financing them raises no difficulty because there will be ample security, once the debts are scaled down to such amounts as are within the means of the cultivators to pay.

There is another thing which must be done, if this Bill has got to be worked properly. The Bill leaves it entirely to Government to establish Boards in any area; besides, it leaves entirely to Government to make provision for granting compulsory powers to any of the Boards. I hope Government do not mean to use the discretion by putting off the starting of the Boards longer than is necessary, nor do I think Government intend that the Boards should not be started all over the province at the same time. It is very essential that the Boards should be started within every area, because if you start it in one area and leave out another area, the result will be that it will only accentuate the miseries of the people of the area which is not going to have a Board. In the second place, Sir, I think that from the very start, you must have Boards who would be able to make attempts at compromise on the consent of all the parties concerned, but there must be Boards who shall be given compulsory powers to make the debtors and creditors to come to a reasonable compromise when there is a risk of their not coming voluntarily to an agreement.

Mr. PRESIDENT: Dr. Sen Gupta, do you find it necessary to make these submissions at this stage? It would be better if you would refer to them when the relevant clauses are reached.

Dr. NARESH CHANDRA SEN GUPTA: Sir, there are no relevant clauses in the Bill.

Mr. PRESIDENT: Then your task is a hopeless one.

Dr. NARESH CHANDRA SEN GUPTA: I am only trying to point out certain details to enable Government to proceed on sound lines when dealing with the problem of agricultural indebtedness.

Mr. PRESIDENT: You must be very lucky if you succeed.

Dr. NARESH CHANDRA SEN GUPTA: Anyway, Sir, as I have said, the Bill provides a machinery for doing something for the poor cultivators, and if Government is really serious about it and is determined to put an end to the huge load of rural debt, it can do a great deal by properly utilizing the machinery of this Bill. And I think it is up to us to see that Government are provided with these powers subject to such amendments as may be made. It is always easy to suggest something better. For instance, nothing could be better than to suggest a scheme by which the entire agricultural indebtedness can be wiped out. There are heaps of things which might be bettered, but as is well known the worst enemy of the good is the better. Our friends here who have talked sympathetically of these cultivators have trotted their views for no other purpose than to kill the Bill. I, for my part, Sir, do not want that this Bill should be killed on the off-chance of getting something better in the indeterminate future. I do not want like Mr. Sahana that the poor agriculturists who are most hard hit and who are in the throes of a great economic distress should be left for years more to live on nothing better than the sympathy of men like Mr. Sahana.

Babu AMULYADHAN RAY: Sir, I oppose the amendment moved by Mr. P. Banerji. Mr. Banerji has not made out any case for recommittal, and instead of moving this motion he would have done well if he could have welcomed this Bill which will certainly lead to the good of the country. Sir, it cannot be denied that after the bold statement made by His Excellency Sir John Anderson at the St. Andrew's Dinner in 1933, Government have gradually begun to realize the gravity of the situation created by rural indebtedness. Then, Mr. Banerji has also said that this Bill will destroy the peace and tranquillity of rural Bengal. Mr. Satish Chandra Ray Chowdhury has followed him and said that it will destroy rural credit. Where, Sir, is rural credit and what is the position to-day? The agriculturists of the land, destined as they are to work in the scorching rays of the sun, in the cold and in the rains, are now in a hopeless and helpless condition. Being involved over head and ears in debt, they are now in the midst of dire despair and distress. Half-fed and half-clothed, they are cursing their lot and going on anyhow counting the day after day.

If in the midst of these alarming circumstances some remedy is not provided, as the Hon'ble Member in charge of the Bill has so rightly remarked and frankly confessed, it would lead to a situation in the country which may end in disaster. In my opinion, Sir, this Bill will not destroy the peace and tranquillity of rural Bengal, but it will prevent the creation of the situation which has been witnessed in France and Russia. Then, Sir, in one point I agree with Mr. P. Banerji. It is true that the Hon'ble Member is unable to advance any money, and I believe that in the absence of any financial

help the award of the debt settlement Boards will, in many cases, remain merely as paper transactions. Of course, it would have been very well if there were any provision for long-term credit, bearing a minimum of interest for those who are unable to take advantage of the facilities, and it would have also been welcome if there had been provisions which would be attractive to the creditors. But, when that is not possible, we must make the best use of the worst situation. Rai Bahadur Satya Kinkar Sahana has said that public opinion on this Bill is very much against it. I do not know, Sir, whether Mr. Sahana has read the reports of the Royal Commission on Agriculture, the Board of Economic Inquiry, and the Banking Inquiry Committee. In view of the overwhelming opinion of these Committees, it is not at all necessary to have any further public opinion. The problem of the day is how the cultivators of Bengal can be relieved of indebtedness, and, Sir, so far as that problem is concerned, I am sure this Bill is bound to fulfil our object to a great extent. With these few words, Sir, I oppose the motion moved by Mr. P. Banerji.

Maulvi TAMIZUDDIN KHAN: Sir, I want to say a very few words in support of the Hon'ble Member's motion for taking the Bill into consideration and in opposition to the motion for the recommittal of the Bill. Dr. Naresh Chandra Sen Gupta has dealt with the arguments that were advanced for the recommittal motion. In fact, no valid arguments were advanced by any of the speakers who supported that motion, and therefore I do not like to deal with the points that were raised by them. I would like, however, to say a few words on the points raised by some of the members regarding the total rejection of the Bill. I think that Dr. Sen Gupta was under a misapprehension regarding this point, and probably it is on this account that he has not replied to any of the arguments advanced by some members in favour of the rejection of the Bill. If the motion for taking the Bill into consideration fails, that virtually amounts to a rejection of the Bill. Therefore, we are now considering that question also. It has been said that this Bill should be rejected because public opinion is not in favour of a measure like this; it has also been said that out of 65 opinions received 60 are against the measure. Of course, I have not counted the actual proportion like Dr. Sen Gupta, but if we analyse these opinions what will these come to? What are these sixty associations which have given their opinion against this Bill? If we look into these opinions, it will be found that they all reduce themselves to one and one opinion only. On the other hand, if we look at the real opinion in the country, which unfortunately is not vocal and which the microscopic vocal section of the populace has been able to keep down hitherto, it would be found that there is an overwhelming majority of opinion in the country in favour of a measure like this. Of course, I do not say that we are fully satisfied with what is being done: the country

wants much more. But taking a practical view of the situation I think it is not possible for Government to advance any further under the present circumstances and therefore the argument that public opinion is against this measure has no legs to stand upon. If real public opinion were taken, it would be found that, on the contrary, there is an overwhelming majority of opinion in favour of a measure like this. It has also been said that Government should have provided money for paying off the creditors after a settlement is made by the proposed conciliation Boards: it looks very well and good to talk like that. But, Sir, is it at all a practical proposition under the present circumstances? We can vilify the Government, we can attack the Government in any way we like, but is our Government in a position to advance the money necessary for a purpose like this? It has also been said that the total rural indebtedness of Bengal amounts to Rs. 100 crores, though I think it is at present much more than that. Is it at all thinkable that this Government could by any means procure that amount of money for working out a scheme of debt liquidation under the present circumstances? I think it would be nothing but running after the will-o'-the-wisp if one seriously proposes a thing like that on the floor of this House. Then, Sir, one seemingly cogent argument was advanced by Mr. Satish Chandra Ray Chowdhury and Mr. P. Banerji and some other speakers. I do not admit that the argument was at all cogent, but they think that it was an unanswerable argument and that is that this Bill proposes to deal unfairly with one class of people and seeks to give undue favour to another class of people. They did not explicitly say what they meant, but they seemed to hint that the present measure would unfavourably affect the creditors and would unduly favour the debtors. That I think, Sir, is a proposition which will not stand scrutiny. First of all, it has been admitted by every one on the floor of this House that something must be done to improve the condition of the poor agriculturists and I hope these are not merely crocodile tears shed by the members of this House for the starving millions of this country. If there is sincerity behind a cry like that, members should realize that something practical must be done to give relief to the agriculturists. And in what way, Sir, can we give that relief? A measure like this, is one of the ways in which Government think that relief can be given to them to a certain extent. And the Select Committee also has thought that this is one of the ways in which some relief can be given to them. If it is said that this is not the proper way, the responsibility lies on those members who are opposed to this measure to show a more practicable way in which relief can be given. But no member has been able to suggest on the floor of this House any other practical way of giving this relief. Therefore, Sir, in the absence of any other better and more practicable scheme, I am sure the scheme which has been produced by Government after a good deal of deliberation and after taking the opinion of an expert

committee—I mean the Board of Economic Inquiry—should be accepted. Now, Sir, is it at all true that this measure will destroy rural credit? Is it at all true, also, that this measure will prove to be detrimental to the interests of the creditors? I say most emphatically that it will not be detrimental to the interests of the creditors or to the interests of any other class of people in the country, for the matter of that. Sir, those who say that the creditors will be banefully affected do not know perhaps the actual state of things in the country. What is the present condition of the creditors themselves? They, also, have fallen on evil times. They cannot find money enough to institute suits. They are not able to find money enough to pay for the necessary court-fees even. Sir, I am personally aware of one such instance. A certain Muhammadan creditor in the district of Faridpur had court decrees to the value of about Rs. 30,000, but after he had obtained those decrees the depression set in and he could not execute those decrees for want of funds, with the result that, all this huge sum of money was lost to him on account of his inability to provide even the comparatively small expenses necessary for the execution of decrees.

Sir, I think the state of things in other parts of the province is not very different from this. I therefore think that the creditors will not be very adversely affected by the operation of this measure. On the other hand, they also will be benefited by this Act. Their debts will no longer be barred by limitation. When this Bill comes into operation, they will inevitably get their decrees very cheap from courts established in their own villages. Again, Sir, it will be found that in many instances creditors have invested large sums of money with the agriculturists and they have not been able, hitherto to realise, any substantial portion of their dues. As soon as this Bill comes into operation the creditors will be in a position to get a large number of decrees in their favour. Supposing a particular creditor has 500 debtors, each of these debtors will have to pay something to him annually and he will thus realise in total a large sum of money every year and in that way I believe it will prove a boon to the creditors and it will not at all be detrimental to their interests. Of course there may be some creditors here and there who may be adversely affected; similarly, debtors will also be adversely affected. In fact my friend, Mr. Hassan Ali, argued when this Bill was first of all introduced in this Council that it was a Bill for the creditors and it was not a measure calculated to benefit the debtors at all and his arguments were not altogether unsubstantial. As far as I remember, he said that the debts were being barred by limitation, the creditors not being able to file suits for want of money and decrees even were being barred by limitation. He thought, therefore, that in the natural course of things a large part of the debts of the agriculturists would be wiped out within a short time provided this economic depression

continued—that is what he said. He almost hoped that this depression would continue. I think, Sir, that the position he took up was not an untenable one. From that point of view in many cases it will detrimentally affect the interests of debtors to a large extent. But I think in fairness we should not be blind to the interests of the creditors, in our anxiety to help the debtors. We do not wish that the creditors should lose their good money. Although the payment may be deferred, we never wish that they should not be paid their proper dues; nor the poor debtors ever wish that either their mahajans or landlords should be deprived of their proper dues. That is not the mentality of the debtors or agriculturists of this country. They want some relief and the only way to do it under the circumstances is to defer the payments.

My friend, Mr. S. C. Ray Chaudhury, says that there is a sense of insecurity in the country on account of this measure being introduced. I do not believe that there is a sense of insecurity actually prevailing amongst the creditors. But there really is a sense of insecurity amongst the agriculturists. They think that heavily involved in debt as they are and unless something is done for them and some respite is given to them their holdings will be sold out in no time. They are, therefore, in a state of dispair. There is no sense of insecurity amongst the creditors but certainly there is a feeling like that amongst the debtors. It is, therefore, time for the Government, as well as the well-wishers of the agriculturists, that this sense of insecurity should be wiped out of the minds of the people of our country. From whatever angle of vision we consider this matter, I think there is no cogent reason which can be advanced in favour of the rejection of this Bill. If there are any defects in the Bill, let us try and remedy these defects on the floor of this House and let us not unwisely throw it out altogether.

Nawab MUSHARRUF HOSSAIN, Khan Bahadur: Sir, may I rise on a point of order? When this Bill was sent by this House to the Select Committee, we knew that it was intended for all classes of people living in the villages. May I enquire whether the Select Committee has any right or power to narrow down the scope of the Bill?

Mr. PRESIDENT: I cannot follow the Nawab Sahib's point of order. The name of the Bill has been changed and in all probability that is troubling him.

The Hon'ble Khwaja Sir NAZIMUDDIN: If the Nawab Sahib will refer to the original section—sub-clause (9) of section 2, he will find that "debtor" means a debtor whose primary means of livelihood is agriculture; it is the same here, as "debtor" means a debtor whose

primary means of livelihood is agriculture. Of course there are certain verbal alterations which, however, do not alter the scope of the Bill.

Dr. NARESH CHANDRA SEN GUPTA: The relation between agricultural debtors and their creditors remains.

Mr. PRESIDENT: The point is that the Select Committee cannot go beyond the scope of the Bill, but otherwise they have a free hand. They are the creation of this House; they are your accredited representatives and I think they are entitled to make any alteration according to the light in them, though they could not go beyond the principles or scope of the Bill. You can revise their decision, but you cannot question their authority even if they had narrowed any of or all the provisions of the Bill.

Babu JITENDRALAL BANNERJEE: The original name of the Bill was a misnomer

Maulvi RAJIB UDDIN TARAFDER spoke in Bengali in opposing the motion for recommittal, the following being an English translation of his speech: –

Mr President, Sir, I oppose the motion for reconsideration of the Bill for agricultural indebtedness Mr P Banerji and some other members have brought in the motion for recommittal of the Bill which I strongly oppose and beg to say a few words that those gentlemen who have vehemently supported the motion do not know and can't understand the pitiable condition of the poor agriculturists who are groaning under heavy burden of the debts

The Hon'ble Minister in charge Who has drafted the Bill and the members of the Select Committee who have modified or added to the Bill, in my opinion, have not really understood the sad plight of the poor indebted agriculturists and to my mind the relief which has been given is insignificant in comparison with the wants of the agriculturists and the Bill, in my opinion, has given some relief by one hand and snatched away by thousand hands

Some sort of retributions would have been done to the oppressed agriculturists by the *zemindars* and money-lenders for the sins they have committed so long on the ignorant agriculturists if they could pass a Bill by liquidating all their debts but to expect such things from this Legislature would be madness. To search for such instances one is not to go into hills and jungles but will be easily found in the examples which the friends of this House have shown by their antagonism to the passing of the Bill.

It is a matter of great pity that the people, who supply the money to the *zemindars*, the money-lenders, the lawyers, doctors and others for their luxuries are not considered to be fit persons to stay in their homes for their poor living

Agriculturists and their representatives have come down to Calcutta from all parts of the Province to beg mercy from the Councillors and Governments But it would have been better for them to go to wilds than come to the Councillors, as that would not have acted antagonistically than the present one

It is a matter of strange coincidence that the agriculturists are now in debt and that to the amount of crores and crores of rupees. It is a strange phenomenon that the agriculturists are in debt. The people who produce heaps of paddy and thousands and thousands of maunds of rice are in debt, the people who produce fine rice but eat coarse rice, the people who spin fine fibres wear coarse cloths and the people who produce money for the rich are moneyless, that is a thing to be pondered over Sir I think you have never thought over the matter nor have you spent a single moment to discover the causes of their miseries To my mind, it is the higher rate of interest and the exorbitant rate of rent which have brought them to this plight. No civilised Government in the world has ever invented such instrument of oppression of collecting the debts in such an inhuman way.

I don't want to take more time I hope the hon'ble members will kindly think over the matter and in order to give some relief to the helpless agriculturists they will allow this Bill to be passed in law

The Council was adjourned for 15 minutes

(After Adjournment)

Maulvi ABDUL HAMID SHAH spoke in vernacular in support of the motion, the following being an English translation of his speech:—

Mr President, there has been enough of argument in favour of the recommittal of the Bill to the Select Committee I would now like to restrict myself to only two points In the first place, we should bear in mind that 85 per cent of the total population of Bengal are agriculturists In 1929 the Provincial Banking Enquiry Committee calculated the net amount of indebtedness of the agricultural community in Bengal to be one hundred crores of rupees. Needless to say, this amount must have mounted up to 275 crores in 1935, taking the rate of interest to be 25 per cent The Committee also ascertained the figures of income and expenditure of the community per capita per annum. It was Rs 84 only in 1929. The credit and debit sides neutralized each other and no balance was left behind Since 1929 the prices of agricultural produce have gone down So that the cultivator

who could make no saving in 1929 found it absolutely impossible to pay a single farthing towards the liquidation of his debt ever since the crisis set in. Now, if the amount of liabilities, viz., 275 crores, is distributed among the total agricultural population, the individual quota of liability will be Rs. 60. This shows that relief in some form or other is most urgently called for. The waste of time involved in the procedure of recommittal will simply make matters worse. The idea of recommittal should therefore be dropped at once.

My friend Babu Satis Chandra Ray Choudhury has regretted the fact that the Bill has made no provision for the so-called middle class people. A section of the press has also spoken in the same strain. In their opinion the Bill has been introduced by the Government simply to penalise the educated middle class community to which agitators for political independence mainly belong. My reply to it is that of the total population of Bengal 85 per cent. are agriculturists and 15 per cent. consist of landholders, lawyers, medical practitioners, merchants and mahajans. Landholders should be grateful to the Select Committee for the provisions made by it in the present Bill for their community. The Select Committee has also made ample provisions for those among the tradesmen engaged in what is known as Home Industry with a small capital As for bigger enterprises the Insolvency Act is there on the Statue Book Only the lawyers and medical practitioners remain to be dealt with. If they admit it and I believe they will, that the rise and decline of their pecuniary position is linked up with that of the peasantry, they will have nothing to say against a Bill which is calculated to improve the economic condition of the agricultural population. Of the so-called middle class people we have now to deal with those who are service-holders The definition which has been given of the agriculturists in the capacity of debtors in the Bill as amended by Select Committee brings 90 per cent. of such service-holders as sons and heirs of the agriculturists within the ambit of the Bill. Now, under the stress and strain occasioned by fall in the prices of the agricultural produce it is only the service-holders who with a fixed income and the cheap conditions of living, are enjoying all the amenities of life in the largest possible measure.

Next, as for public opinion on the Bill I would like to point out that out of the 65 opinions received after the appointment of the Select Committee 63 are against the present Bill. Now, of these 65 opinions more than 38 are from Mymensingh alone. It is a district of which I am a representative. I can say from personal knowledge what classes of people have sent these opinions and how far they are representative of the views held by 58 lakhs of the inhabitants of the district. Ever since the Bill came before the Select Committee the Pleaders' Associations in the district began to express an opinion opposing the Bill. Next, a large number of creditors' associations

were brought into being all of a sudden and followed suit. I can firmly assert that not a single of these creditors' associations had been in existence before the Bill was placed before the Select Committee. We can understand the opposition of the creditors' associations but how can one account for the adverse attitude of the Pleaders' Associations which have their clientele both amongst the creditors and debtors?

For a long time the agricultural population in Bengal have been agitating for a relief of their indebtedness. But their agitations and movements have been ruthlessly put down. In 1930-31 when Sir William Prentice was the Home Member the peasantry of Bengal having been exasperated by the repeated promulgation of section 144 petitioned the Government for redress of their hopeless pecuniary condition. Of these petitions, nine thousand came by registered post alone. As for the unregistered ones no account has been kept. It is the Government themselves who expressed inability to calculate their right figure. In the face of this fact can anybody say that public opinion is not strongly expressed in favour of the Bill in question?

Babu HEM CHANDRA ROY CHOUDHURI: Sir, I rise to oppose this motion for recommittal. My reasons for opposing this motion are different from those advanced by the previous speakers. In my opinion this recommittal will not serve any purpose; on the other hand, it will injure both the creditors and the debtors. Sir, after the introduction of this Bill in this House the provisions of the Bill had been given wide circulation and its provisions have been misinterpreted by interested parties among illiterate masses and those masses have misunderstood the provisions. They have been given an idea that under the provisions of this Bill they will be given instalments for 20 years and hence they need not pay the creditors at present and they may conveniently wait for 20 years. Though some of the debtors are capable of paying something at the present moment, they have practically stopped payment. Hence the creditors are not getting anything from the debtors, and so it is in the interest of the creditors as well that the Bill should be taken into consideration as soon as possible. Then, Sir, from the point of view of the interests of the debtors as well this Bill should be taken into consideration immediately, because the creditors are alarmed by the provisions of this Bill and they are now rushing to the civil courts for the execution of their decrees, the debtors will be greatly harmed, they will be ruined having lost what they have. So, in the interest of both the creditor and the debtor it is better to take the Bill into consideration as soon as possible, it will then be open for the House either to accept it or to reject it on the floor of the House. It will be no good sending the Bill to the Select Committee again.

Before I take my seat, Sir, I want to speak a few words of protest against some observations made by Maulvi Tamizuddin Khan. He has told us that those who say that the prosperity of this province is bound up with the prosperity of the tenants or agriculturists but who at the same time oppose this Bill shed crocodile tears. He also accused the oppositionists for not putting forward any alternative better suggestion for relieving the agriculturists from their huge debt. But, Sir, the Maulvi Sahib conveniently forgot the suggestions made by the oppositionists, or, perhaps, he does not want to know what those suggestions are. These oppositionists sincerely believe—and I think there is no reason to doubt that—this Bill will not serve the purpose for which it has been designed. They also complain that the whole burden of relieving the debtors of their debts has been unfairly imposed on the shoulders of the creditors, and that Government is not taking any responsibility for liquidating the debts of these debtors. They have, in fact, made concrete suggestions: they want that Government should advance some money for the payment of a portion of their debts due to the creditors. The Maulvi Sahib himself admits that the condition of the creditors, also, is in no way better than that of the debtors. If that be so and indeed it is so the creditors also deserve as much protection as the debtors. The creditors have already made sufficient sacrifices, and they are ready to accept less than the principal even if they get something in cash, and if Government agree to advance some money to the debtors the creditors will get a portion of their dues in cash, and they will readily agree to forgo a greater percentage of their total dues. In that case, this scheme will not only benefit the creditors but also the debtors, because the debtor's debts will be reduced to a greater extent. So, the charges levelled against the oppositionists by the Maulvi Sahib are not bona fide Then, the Maulvi Sahib has also said that by this measure rural credit will not be shaken, but, Sir, I hold a contrary view If he goes to the mufassal, he will find what consternation has been created not only amongst the creditors but also amongst the other sections of the public, because Government is going to take away the vested interests which the creditors have secured under the existing law, rather arbitrarily, because they are not taking into consideration the other aspect of the question The creditors, also, are, in many cases, indebted to some others, but they will not get any relief under this Bill or any existing Act. So, it is the duty of Government to look to the interests of both the debtors and the creditors. I think that there is not a single dissentient voice in the whole of the province about the necessity of granting relief to the debtors. What the oppositionists want is that Government should advance something to the debtors for payment to the creditors. They also want that Government should establish some credit societies in the villages so that the cultivators may get loan at the time of their need from those Societies. Sir, it is idle to speculate whether the

money-lenders in future will advance any money to the agriculturists or not. It is sure as anything that they will not open their purse in future. If the agriculturists do not get any loan at the time of their need which they have been getting up to this time for their cultivation, for purchase of bullocks, seeds, etc., and for the payment of rents to the landlords, then great mischief will be done to them. I may tell you very confidently that if some sort of agency is not established in the mufassal for lending money to the cultivators, then the time is not very far off when a large number of holdings will be sold for arrears of rent. So, what the oppositionists want to press upon Government is not solely in the interest of the creditors but in the interest of the debtors also and in the interest of the whole province. Therefore, Sir, Maulvi Tamizuddin Khan is not justified in saying that the oppositionists are shedding only crocodile tears. With these words, Sir, I oppose the motion for recommittal.

Maulvi ABUL QUASEM: Mr. President, Sir, I would have been very glad to support this motion for recommittal had I the least expectation that the changes which I desire would be brought about by the Select Committee. The Bill as it has emerged from the Select Committee is unsatisfactory to me; it does not go far enough in the direction in which I desired that it should have gone. Government was anxious, and I believe rightly anxious, to eliminate all possible antagonisms towards this Bill. They tried to find the greatest common measure of agreement, and that led them to yield many important points which I regret very much. Sir, there have been introduced into this Bill, as amended by the Select Committee, provisions which I heartily dislike, but which were a result of compromise on the part of Government. If I knew that Government would be pleased to reconsider their attitude in the Select Committee and eliminate these undesirable provisions which were introduced by the Select Committee, I should be only too glad to support the motion for recommittal but I find that there is little likelihood of that taking place. Government have been, in my opinion, rather halting and hesitating in the attitude towards this Bill. Of course, the Bill has emanated from them; they are out to do some good to the poor, distressed agriculturists, but I think the provisions embodied in the Bill will not be as effective in bringing about the desired end as they would have been if Government had been prepared to go further than they have done. In this connection I would refer only to two instances. Section 9 (*a*), as introduced by the Select Committee, is a section which I intensely dislike. An agriculturist who happens to be a joint debtor with a non-agriculturist will get no relief under this Bill, and the number of people who happened to be situated like this is not inconsiderable. Then, the surety will be thrown to the wolves. The principal debtor, if he is an agriculturist, will alone

be given some relief. Here we notice an example of robbing Peter to pay Paul. Sir, I have just cited only two instances. I could cite more, and they would go to show that the Select Committee has, as a matter of fact, whittled down some of the important provisions of the Bill. When Khwaja Sir Nazimuddin stated yesterday in his speech asking the House to take the Bill into consideration that no vital changes were brought about in the Select Committee, I believe he was not quite right. In my humble opinion vital changes have, as a matter of fact, been brought about—changes which will result in whittling down the original provision of the Bill; in that sense the Bill is unsatisfactory to me. However, Sir, I must gratefully recognize that this Bill has come from the Government under the inspiration of our good and great Governor for the relief of people who are admittedly in distress, and who greatly stand in need of this relief. If we cannot get the whole loaf, we have got to be satisfied with a half; and on that principle I am going to be content with this Bill so far as it goes, only reserving my right to attempt to bring about changes which I think should be brought about. But there is no need for re-reference of the Bill to the Select Committee on the grounds which have been urged by the mover who asked for recommittal. It has been suggested that credit would be brought to a standstill and that money-lenders and *zemindars* will suffer. But, Sir, I desire to point out that *zemindars* will not suffer in the least, nor the money-lenders really; they would on the contrary, gain,—taking into consideration the situation in which they find themselves when they are not getting any payment. It is an abnormal measure necessitated by abnormal times. Sir, it has also been complained that the sanctity of contract, the rights of the people and their liberties, and this thing and that are being sought to be violated by the provisions of this Bill. But, Sir, Government exists for the people. Now, who are the people of this land? The agriculturists constitute more than 80 per cent. of the population of this land. Government exists for them, and the Bill is at best only a half-hearted measure that they have introduced into this Council in order to relieve the vast majority of our people who are admittedly in dire distress and poverty, but to say that this Bill is only in their interest and injures the interest of others is to say a thing which is not at all true. Sir, I very strongly oppose the motion for re-reference of the Bill to the Select Committee.

Maulvi SYED MAJID BAKSH: Sir, this motion, as is usual with motions of this kind, is at best a flanking movement directed towards delaying the passing of this Bill into an Act. In the first place, I think I should like to say something about the remarks made by some speakers in support of the cant phrases which are usually used by them. One of these has just been mentioned by my predecessor, viz., sanctity of contract. Unfortunately they forget the law. Neither here in this

country nor in the country of its origin, I mean England, such a sort of sanctity of contract is ever known. I hold in my hand a volume which is known as Halsbury's Laws of England—2nd edition. In it the law of contract as it exists in England is embodied. I shall refer my friend to one of the most cogent and prominent cases—the famous decision in Earl Aylesford *v.* Morris, in which it is clearly laid down that the cobweb woven by my friends about the sanctity of contract is purely meaningless. If a man is in a disadvantageous position with respect to another party and if in that disadvantageous position a contract is entered into, no court will enforce the contract. This is the decision given by the learned Judges in the case I have mentioned—8th Chancery (App.), 484. My friend, Mr. Roy Choudhuri, might note this. Here in Bengal we find that the *raiyat* is in a very disadvantageous position in respect to his creditors. He is in need, he is hungry, he is not only himself hungry but his whole family is also hungry, and under the stress of hunger he wants money. If, under these circumstances, somebody finding that the *raiyat* has no other alternative but to borrow lends him money at a very high rate of interest—a rate which the poor cultivator having no knowledge of mathematics is unable to calculate the consequences thereof such a bargain should not be supported. Money is lent to him and he borrows it agreeing to pay a certain rate of interest. I think that that rate of interest cannot be upheld by any court in any other country; but we live in a country when we have senseless imitations of things that exist in other countries. We have the Law of Contract and the Law of Evidence. The learned Judges who administer these laws have no knowledge of the conditions which prevail in the countries from which they have been brought here. Therefore they give decrees in the case of money lent out at, say, 75 per cent. and the highest rate goes up to even 150 per cent. This is not my own statement but you will find it in the Report of the Banking Enquiry Committee. They have stated in their report that the interest in this country varies from 37½ per cent. to 150 per cent. In these circumstances they recommended a sort of usury law being enacted here. You know, Sir, that such an enactment has already been passed by this Council and it was sponsored by our hon'ble friend, Khan Bahadur Azizul Haque. That measure to a certain extent gave relief to those who are not agriculturists; some of my friends belonging to the middle class have got some protection by that enactment. It is only the agriculturists who hopelessly find themselves in debt—a debt incurred for the purpose of common good, viz., producing wealth out of the land. He incurred the debt not only for the good of himself but for the good of all concerned, viz., for the purpose of producing wealth out of the land. If for that common good a man borrowed money, and then having spent it and sown his seed if he finds himself by some chance—a chance that is not very unlikely to occur in this country and which has occurred this year as well—

that everything he had laboured for is going for nothing, the man should hardly be blamed for it; the blame should be shared both by the agriculturist and the creditor. It is injustice to put the whole blame upon the agriculturist. The agriculturist out of a very sincere wish to do good to all people—Government servants, creditors, and *zemindars*—borrowed money in order to produce wealth, but he could not do so through no fault of his and we must help him. It is idle to say that sanctity of contract can never be trampled upon and he cannot be shown the least consideration, when he finds himself in distress in this way from year to year and involved in debt. It is not a fact that he does not want to pay the debt; he pays the debt as soon as he gets the crop, but the debt has in the meantime amounted to such a huge extent that he finds it physically impossible to pay out of the land in his possession. Therefore relief is necessary; it is not only necessary for his own interest, but in the interests of all. If the agriculturists cannot produce wealth he will starve and die. We who live upon the income of agriculturists and are to a great extent parasites on their income shall also die. Therefore it is to the interest of all of us that the agriculturists should be given relief. It is not at all an unheard of thing in any other country. We are not introducing anything or bringing from some unknown place and foisting it on the shoulders of the creditors. This sort of thing often happens in other countries. You will find, Sir, and my friends who are very fond of citing the examples of other countries know very well that after the War there was a devaluation of the German Mark, the value of which went down and down and the result was that many persons of the middle class who had amassed wealth were ruined and became paupers. When you find credit is going down everybody must suffer. There is no need of giving that sort of help to the creditors which they could not otherwise get under different circumstances. You will find also that many other countries have emulated and followed the example which we are now doing. In this sense I find that the cry of those persons who think that they are very badly treated by Government is absolutely baseless. This measure, if actually brought into operation, will do some good. It will leave some liquid money in the hands of the agriculturists. If their amount of debt is reduced and if their high rate of interest is reduced and if instalment is given in such a way that he can pay, he will get some money and will be able to pay the *zemindars* who have been hard hit. I think my friends, the *zemindars*, will bear me out when I say that the tenant has got a conscientious habit of paying the *zemindar* first. The *zemindars* are very hard hit of all the persons on account of the depression. In my own district one *zemindar* with an annual income of Rs. 1 lakh after paying a revenue of Rs. 1½ lakhs had his *zemindari* sold for Rs. 1 lakh because the agriculturists cannot pay rent. The man who bought it could not realise the amount of revenue from the agriculturists and

has up to this time been paying the Government revenue from his own pocket amounting to Rs. 3 or 4 lakhs. If the agriculturists have some money in their hands they will pay the landlords first, and they will be able to purchase the necessaries of life, and consequently trade will thrive. In this way by increasing the income of labourer and agriculturist America has adopted the recovery plan the other day. The agriculturists in America are able to purchase things produced in the factories and also in the lands and in that way the depression has been averted in that country. It is one of the methods of averting the depression which has been ingenuously hit upon by this department. In this way business will thrive and lawyers also will thrive because if the tenants have money they will get into disputes and seek the help of lawyers. The bogey that has been raised that everything is gone is absolutely futile. It is true that diseased persons when brought under treatment refuse vehemently to take medicine. So when relief is offered to creditors who I think have a diseased brain in this respect also vehemently object. I think the objection will soon die down when they find the good effect of it.

Sir, as regards the other objection that rural credit is going to be ruined was raised by my friend, Mr. P. Banerji, a nationalist in his heart of hearts and who more than others is willing to see prosperity in the land and would like to see the poor people thrive under a sort of nationalist administration. I was surprised to find that he of all persons raised this objection. Of course the agriculturists require money at certain times but is there any provision in this Bill that the capital invested at a reasonable rate of interest is going to be barred. Only high rate of interest is going to be barred. If my friend means that by stopping high rate of interest rural economy will be ruined, he is quite right. I should refer him to the established law in this respect prevailing in England, i.e., in regard to unconscionable bargains. If he refers to the reported case of Fox *v.* Macrae, he will find that unconscionable bargains are never supported in England. I now wish to say something about ruining the rural economy. In the first place, as an effect of this Bill the agriculturists will be solvent and if he requires money the creditor will certainly invest the money but he will not be able to invest it at a very high rate of interest. If that means that it will ruin rural economy, I do not know what other measure could be devised by Government to stop this high rate of interest. Sir, a high rate of interest is also, as my friend knows, prohibited by the Hindu Shastras. The Hindu Shastras say that he who takes a high rate of interest is excreta —dung——

The Council was adjourned for 15 minutes.

(After Adjournment.)

Maulvi SYED MAJID BAKSH: Sir, I oppose the amendment.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, most of the speakers who have opposed the amendment have proved conclusively and practically that there is no case made out for recommittal, but in view of the remarks made by the mover of this amendment, I feel it my duty to meet the points raised by him. Sir, for the last five years Mr. P. Banerji, in season and out of season, has attacked Government on behalf of the poor tenants, the poor cultivators and the masses of Bengal——

Mr. P. BANERJI: This is the 7th year, not five years.

The Hon'ble Khwaja Sir NAZIMUDDIN: To-day he has appeared in his true colours representing the cause not of the tenants which he has upheld so far in the last seven years as corrected by him, but only as an opponent, a bitter opponent of the tenants. (Question.) I claim that the Bengal Tenancy Bill exposed the Congress claim to represent the masses, and to-day this Bill has exposed the claim of Mr. P. Banerji to represent and to speak on behalf of the tenants of Bengal. Sir, the three speakers who have supported the amendment of Mr. Banerji have tried to make out a case on the ground that out of 65 opinions received and published, practically 60 of them, so they say, are opposed to this Bill. But here I have in my possession over 600 letters and here they are, every one of them registered letters, sent in support of this Bill suggesting certain amendments. Sir, when these letters were pouring in, I was wondering how to stop their coming. They were from poor people who were spending 4½ annas on each in trying to show to the Government how strongly they supported this Bill. I am willing to throw out a challenge to Mr. Banerji that throughout the length and breadth of Bengal, irrespective of caste or creed, all cultivators are in favour of this Bill, and they would not like to have this Bill delayed by even one day. Therefore, it is useless to say that there is no solid support behind this Bill.

Sir, Mr. Banerji and my friend Mr Satish Chandra Ray Chowdhury, both of them, have expressed horror and said that this Bill, one of them at least the mover of the motion, should be called the Bengal Breach of Rural Tranquillity Bill. May I point out to the House that this Bill is based on the recommendation of the Board of Economic Enquiry, and if I may repeat to this House again, what was the composition of this Board? Its President was a Member of the Board of Revenue which is considered an authority on the question of land and land revenue in Bengal. It had as its members, apart from the representatives of this House, representatives of the Chambers of Commerce, representatives of the Universities, specially the Professor of Economics of the Dacca University and Professor of Economics of the Presidency College, Calcutta. Therefore, to suggest that they have

recommended something which will bring about a state of uncertainty and chaos in the country, if one may put it mildly, is a sheer absurdity. This Bill, as Mr. Hem Chandra Roy Choudhuri has very pertinently pointed out, has created a great deal of public opinion and has received a great amount of advertisement in this province and there is no doubt that any delay will whittle down the enthusiasm both of the tenants and the creditors. It has been suggested that there is no adequate organisation provided for debt conciliation. I think Government have placed a very complete and comprehensive scheme and what is more it is based on actual experiments and experience gained though over very small areas and on actual experiments carried out with success in particular areas in Bengal. Those people who say that without provision of finance nothing can be done my reply is that something has been achieved—something has been done—and relief has been given without the provisions of this Bill and there is no reason why with all the elaborate provisions that have been provided in the Bill we shall not be able to give sufficient relief to the cultivators of Bengal as well as to the other interests in this province.

Mr. Satish Chandra Ray Choudhury has most vehemently opposed clause 20 of this Bill. May I remind this House that only three-quarters of an hour before while speaking on the Court of Wards Amendment Bill he supported a moratorium for 5 years but he has opposed the moratorium for 10 years provided in this Bill in the most exaggerated language. If I may point out another inconsistency in Mr. Satish Chandra Ray Chowdhury's speech he has condemned this Bill and he condemns it on the ground that it creates an uncertainty and he has compared it with an earthquake shock. He at the same time is most anxious to have the case of non-agriculturists and middle-class people considered and included in this Bill. He knows very well that this Bill is going to give relief to the agriculturists, but he is very anxious that the middle-class people should also come in. Although he is condemning the Bill he is anxious that they should be given relief under the provisions of this Act. It is an extraordinary attitude which he has taken up. In this connection I should like to explain to the House why Government have not thought it proper to include any one but the agriculturists in the scope of this Bill. I know there is considerable opinion outside that the scope of this Bill should be extended to those who take loans for carrying out small industries or for business purposes other than agricultural. Under the existing clauses of the Bill if a man depends mainly for his existence on agricultural income and if he has borrowed for the purpose of some subsidiary industrial enterprise which is not his main source of living he comes within the scope of this Bill but those people whose main source of income is not agriculture they are not included and the reason

for not including them is this: as far as this Bill is concerned it is based on the supposition that security for all debts is the land and when you are going to amicably settle debts you are going to offer to the creditors something tangible in the shape of security—the land. Whereas in the case of the people who have no land and are like labourers of land or factory labourers and those who have started business and do not possess sufficient land, if these people require relief we have other schemes and if this experiment is successful it is possible either for Government or some other body to come forward to give them relief. But we cannot provide for both of them in the same Bill because as I have said before the scheme in one will have to be different from the scheme in the other. That is the real and main reason why Government have not been able to give relief to persons other than the agriculturists.

Mr. Hem Chandra Roy Choudhuri has said that the creditors have made some sacrifice but up till now they certainly have not, but we expect that when this Act comes into operation they will make some sacrifice. There is one thing which I would like to point out to this House and that is this: that under no circumstances does this Bill contemplate liquidation of debts or a reduction of debts beyond a fair amount. The whole scheme is based on the reduction of debts by a fair percentage but unfortunately the creditors have become panicky. They do not stand to lose very much as long as they are prepared to make some sacrifice or as long as they are prepared to accept reasonable terms; their debts will be paid and they will not have to incur the expense of litigation and going before a Civil Court; they will get their money in an atmosphere of goodwill rather than in an atmosphere of hostility. Therefore I would like to appeal to one and all in this House and to those outside to try and work this Bill to the best of their ability when it is passed into an Act because no party will stand to really lose anything by it. While the debtors will get a certain amount of relief there is an equal amount of compensating advantage to the creditors. What Mr. Tamizuddin Khan said is that one cannot ignore that there is a class of creditors who owing to economic depression have suffered so heavily that they are not in a position to file suits for obtaining a decree or for executing the decree and they are certainly going to get relief by appearing before the Board and getting a certain amount of money every year. It has been suggested that this will stop all rural credit in the rural areas but I do not apprehend that anything like this would happen because the tenant, the cultivator, the debtor is going to pay his debt and as long as he pays his debts there is no reason why the creditors should not advance money. It is only in cases where there is no prospect of realising the money that the creditors will refuse and after all if they have taken the risk to advance money beyond the amount of security there is no reason to

think that later on when they find they will get instalments every year they would refuse to advance money as the debtor will be paying them regularly every year.

Mr. Basu incidentally remarked about the Damodar Canal and the lack of water there. I will not deal with it just now beyond saying this, that I hope that if as a result of this Act he reaps as good a harvest this year as the cultivators of Bengal who are receiving water from the Damodar Canal then I feel that Bengal will be a happy land to-day.

With these words I oppose the motion for recommittal.

Mr. P. Banerji's motion that the Bill be recommitted was put and lost.

The question that the Bengal Agricultural Debtors Bill, 1935, as reported on by the Select Committee, be taken into consideration was put and agreed to.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that in clause 1 (1), in line 2, for the words "Agricultural Debtors" the words "Relief of Indebtedness" be substituted.

I have already listened to the arguments advanced on this point by the Hon'ble Member. I may say at the very outset that I have nothing but praise for the Hon'ble Member for the way in which he took up the cause of the debtors. In the original Bill the very title of the Bill as it was laid down was calculated to extend relief as far as practicable to all classes involved in the present problem. That shows the real outlook at that time of the Hon'ble Member who introduced this Bill. With regard to that I have as I have said nothing but praise for the Hon'ble Member. The point wherein I differ from him now has nothing to do with the question of giving relief to agriculturists. I make my position absolutely clear. It is quite true that any relief which does not touch the agriculturists will not touch the other classes at all. What I do contend and did contend for yesterday is that as Government you are bound to look to the interests of all classes under your care. You cannot distinguish one class from another. You must give relief to all who need it. If you find, however, that by giving relief to one there is the danger of injuring another seriously then in that case you have got to be cautious and you have to explore all the avenues or means of modifying the thing in such a way as to cause least possible hurt to other interests. That is my position.

As a matter of fact I can claim that I am probably the one man who has taken any practical step in his own locality to extend relief

at no inconsiderable personal sacrifice even before the Bill came to be ushered into this House. That is the spirit in which I approach this problem and that is the spirit which I think should animate everybody and particularly the Members of Government who are the custodians of the interests of all persons. With that point in view I would just make one enquiry and it is this: whether it is not possible to relieve the agriculturists without affecting any other class of persons. You may be well justified in extending relief to one man but why should you exclude any other man if by excluding him you injure him positively? Now, Sir, I must admit that it is not my opinion only but it is the opinion of those experts whom the Hon'ble Member has quoted just now and of some of the representatives of the Chambers of Commerce who were in the Enquiry Committee, that rural economic life is so inter-dependent that it becomes often very difficult to give effective relief to one party unless you take into consideration the case of the other parties also. There is one instance, which I will place before the House and on which I shall be obliged to ask for a definite reply from the Hon'ble Member for my own enlightenment and for my own disillusionment. The instance is this: there are certain people who live in the midst of agriculturists and have in times of stress and strain borrowed from somewhere else, for example, from banks and other credit societies, and then lent the money to the cultivators. I can assure the Hon'ble Member that I have no sympathy with the usurious money-lenders—let them suffer to any extent and certainly to the extent of the exorbitant interest which they have been extorting. But what about the honest lender who lent money obained by borrowing as above? In this connection my friend, Mr. Syed Majid Baksh, has made some observations. Speaking as a lawyer—and it is difficult for a lawyer to get rid of the legal rules and maxims—he has quoted and cited Halsbury's Laws of England to make out that there is no sanctity attaching to unconscionable bargains. Sir, we all know that the law even in India is quite clear on this point; every court will grant you relief in cases of unconscionable bargains; then, why this additional burden in the shape of such a measure of doubtful utility? No court will ever pay a claim which is not based on sound legal contract. Why are you then attacking the sanctity of contract——

Mr. PRESIDENT: We are not dealing with this matter at all. I think your remarks should be confined to your amendment.

Babu SATISH CHANDRA RAY CHOUDHURY: All right, Sir. What are you going to do with regard to these persons who are of such great help to the cultivators by getting money for them from

somewhere else either by borrowing or by pledging their credit. I have got within my personal knowledge persons who just to help their neighbours or to keep up their position are in the habit of borrowing money from somewhere else and lending that money to cultivators so that they might carry on and in some cases persons borrowed money on the security of their lands and advanced agriculturist debtors money for the purpose of setting them on their legs. The relationship existing between these persons is very close and intimate; they are very helpful and serviceable to the agriculturists and as such they should not be put out of court altogether. Now, Sir, when the original Bill was framed I think this idea was in the mind of the Hon'ble Member so that persons and interests who were intimately connected with agricultural interests should not suffer so greatly as ultimately to create a situation which would lead to these cultivators loosing the services of their old friends in the future, especially having regard to the fact that Government is not at present in a position to advance any loan and create any machinery for their help. These things, although they might not appear very clearly now, at this moment, yet they are bound to come in the surface as the Act goes on functioning. I can assure the Hon'ble Member who has brought this measure that if his measure fails that will not be on account of lack of sympathy on our part or lack of co-operation on our part, because we know that in a matter like this, there cannot be any withholding of co-operation, but it will fail on account of its inherent defects. You should remove the defects which are in your power to remove now and here. And why should you not do it? Now, Sir, it appears that even the Select Committee did make some attempt to bring in people who cannot be strictly called agriculturists. The affected changes providing that even persons who have let out their land to *baragadars* and *adhiars*, who do not work the plough themselves, even they should be given some chance of participating in the benefits which the Act is designed to confer. I beg to submit that after the Act is worked for some time it may transpire that by excluding a certain class of essential interests and people from the purview of the Act you have created a situation which requires to be remedied by any subsequent amendment of some of its provisions and clauses. It is in that view of the matter that I would urge upon the Hon'ble Member to see if the original idea cannot be restored. I mean whether the title which gave Government a very wide scope for further amendments of the Act and for a larger extension of this relief cannot be restored. If it can be done, there is no reason why it should not be done. Of course the main person concerned in the Bill is the agriculturist and the provision in the Bill is that a man must primarily be an agriculturist to come under this Act: but that is no reason why the law should not keep its door open for others also. I am quite prepared to give the Bill a full chance of working, provided the persons who are placed in charge of its working can be

relied upon sufficiently for the honest performance of their work in the hope of the other interests also being permitted to come in in due course, if the necessity be felt.

The question therefore is whether, as a matter of fact, it is possible to keep the door open for other interests and for other people to come in, so that the people, I have mentioned, may also get the advantages of this Act; if that is possible there is no reason why it should not be done. That, Sir, is my very simple request and that is the idea which has led me to bring in this amendment which I now commend to the favourable and earnest consideration of the Hon'ble Sir Nazimuddin.

Mr. PRESIDENT: I find that the next amendment also deals with this question of the title of the Bill; this amendment too may be taken up at this stage, so that we may have one discussion on both of them. Kazi Sahib, will you move your amendment?

Kazi EMDADUL HOQUE: I beg to move that in clause 1 (*1*), in lines 1 and 2, for the words "the Bengal Agricultural Debtors Act," the words "the Bengal Rural Debt Composition Act" be substituted.

Sir, the Bill proposes that when it will be passed into law, it shall be designated as the "Bengal Agricultural Debtors Act." Now the implication of such a title is that this piece of legislation has been undertaken by Government to benefit the cultivators primarily, and I take exception to this. I do not understand why a measure like this brought forward by Government in this Council should be stated to have been brought forward for the purpose of helping the agriculturists. Why is there so much drum-beating that it is solely for the purpose of benefiting the cultivators that Government is very very anxious to bring in this Bill? I do not for a moment believe that Government has so much concern for the cultivators, that for their good and welfare it has brought in this legislation. Now, Sir, will it benefit the agriculturists? If it really does benefit the cultivators and no one else then of course it can be said that the title that Government proposes is justified but if that is not the case, then the title that signifies that it is solely for the purpose of benefiting the cultivators that this legislation is brought forward is not justified at all. The Hon'ble Member himself says that it will benefit the cultivators as well as the creditors; so according to him also it is not solely for the purpose of benefiting the cultivators that this legislation has been brought forward in this Council. It is a measure which may benefit the cultivators but is it for the matter of that, for the purpose of benefiting them that this Bill has been brought forward? Certainly not. Some privilege might accrue to the cultivators during the operation of this Act but that does not necessarily mean that Government has been

so very anxious for the cultivators that it has brought in this piece of legislation to remove their distress and dire calamity they are in. I again repeat, Sir, that when the Hon'ble Member himself admits that it will lead to the benefit of the cultivators as well as the creditors, it is clear that the title is not justified, and the Bill cannot be called the Agricultural Debtors Bill.

Now, Sir, if the Government was really actuated by any such motive to bring in relief to the doors of the cultivators it should have thought thrice about the composition of the Boards, that will sit in judgment on their debt questions. It has kept that aspect absolutely vague and it has reserved that right in its own hands. It does not let us know who would be the architects of the debtors' fate; certainly there would be people on the Boards who would not have the welfare of the cultivators at large in their minds. Most of them are anticipated to be money-lenders, people who have hoarded a large amount of money and fortunes in several banks in Calcutta and elsewhere. Such persons would certainly be selected to compose these Boards. So, Sir, if you have the least intention of doing any solid good to the cultivators, you ought to have tried to constitute the Board that would decide their fate in such a way that some good would accrue to them. But you have left that point perfectly vague. It may be that those persons who would compose the Board would not be favourably disposed towards the cultivators—at least we apprehend so. If that be so, then what good will come to the cultivator ultimately. You have made no arrangement to pay the debts of the cultivators. If you could provide money in order to help the cultivators to pay off their debt, then of course, we would have seen that you were really sincere in your profession of your concern for the cultivators; but you have not provided any funds whatsoever for that purpose. What have you done? You have put the cultivators into a more miserable position. The cultivators will always need money. It is not only once or twice that they will need but they will need money always. If the cultivators be relieved of their debts once, do you think they will be relieved for all time to come?

Dr. NARESH CHANDRA SEN GUPTA: Sir, is the Kazi Sahib relevant in his remarks, as he wants to change the name of the Bill?

Mr. PRESIDENT: I think he is trying to show that the name of the Bill indicates that it is primarily for the benefit of the cultivators, but he is trying to show in his own way that it does not benefit the cultivators. At the same time, I must advise him to tell us how the name which he has suggested in his amendment is going to help him.

Kazi EMDADUL HOQUE: Sir, I am trying to show that the Bill will not only help the cultivators but the creditors as well. So the names given to the Bill by the Hon'ble Member-in-charge would be misnomer.

Mr. PRESIDENT: But have you any new arguments to adduce in support of your contention?

Kazi EMDADUL HOQUE: Sir, as no money has been provided, the cultivators will be put into a more disastrous position.

Mr. PRESIDENT: It is no good repeating the same arguments. What have you got to say about the name which you have suggested? Why have you suggested it?

Kazi EMDADUL HOQUE: Sir, I have suggested it because the Bill is going to benefit all classes of people, not the cultivators alone. The name I have suggested is a more comprehensive one.

Mr. H. S. SUHRAWARDY: Sir, the Kazi Sahib has said that the Bill is not going to benefit the cultivators at all.

Kazi EMDADUL HOQUE: Sir, the cultivators may get some benefit out of it. As I was saying, as Government has made no arrangement for the payment of any money to the cultivators, they are not in a position to pay their debts. Besides, their position will be one of utter helplessness, because they will need money not once or twice, but for all time to come. Sir, I am trying to show that the name suggested by the Hon'ble Member in charge is quite inappropriate, because the cultivators will not reap any benefit——

Mr. PRESIDENT: Order, order, you have already said enough on that point. I am prepared to listen to you if you have any new argument to advance; otherwise you should not waste the time of the Council.

Kazi EMDADUL HOQUE: Sir, will it be relevant if I say that if Government provide money for the liquidation of debt——

Mr. PRESIDENT: We shall deal with that point later and you can offer your comments when we reach the relevant clause.

Kazi EMDADUL HOQUE: Sir, as I have already said, the Bill will not benefit the cultivators alone but it will benefit other classes as well. So the name that has been suggested by the Hon'ble Member is not at all appropriate, and the one I have suggested is the more suitable one.

Dr. NARESH CHANDRA SEN GUPTA: Sir, I oppose both these amendments. With regard to Mr. Roy Choudhuri's amendment, the speech that he has made in support of it shows exactly that the Select Committee was perfectly justified in changing the name. He seems to be labouring under the impression that the original intention was to provide for the relief of indebtedness of all persons—that was the impression which was conveyed by the original title of the Bill, viz., the Bengal Relief of Indebtedness Bill. That it was not so is perfectly evident, if we look at the preamble as it stood originally, viz., "whereas it is expedient to amend the law governing the relations between agricultural debtors and their creditors," then if you look at the original definition of debtor in clause 2 (9), you will see that it was "debtor means a debtor whose primary means of livelihood is agriculture, whether he cultivates with his own hands or not and if any question arises in connection with proceedings before a Board under this Act whether the primary means of livelihood is agriculture or not the decision of the Board shall be final." Therefore if you read through the entire Bill as it originally stood, you will see that it never proposed to deal with the composition of debts except those of agricultural debtors. It was for this reason that in order to remove an impression like that of Mr. Roy Choudhuri that the Select Committee proposed this name—that it is to be called the Bengal Agricultural Debtors Bill. I am in perfect sympathy with the motive of Mr. Roy Choudhuri and if any tangible proposal could be made which would enable the debts of other persons who are in need of relief to be adjusted in a similar manner, I should be the first person to go forward to support it. But that could not be done by the amendment proposed by him or by any amount of tinkering with this Bill, because these clauses cannot be treated, as the Hon'ble Member has said, in the same way as the agriculturist could be treated as proposed in the Bill.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, after Dr. Sen Gupta's reply to the point raised by Mr. Roy Choudhuri, I do not think there is any necessity for me to offer any further remarks. I would like, however, to say just one word about the Kazi Sahib. The tragedy of the

Kazi Sahib is that he was itching to support the amendment of Mr. Banerji for recommittal and as he did not dare do so, he wanted to have all his say in regard to this amendment. As the whole of his speech was irrelevant, I do not think it requires any further remarks from me. I oppose both the motions.

The amendments of Babu Satish Chandra Ray Choudhury and Kazi Emdadul Hoque were then put and lost.

Maulvi ABDUL HAKIM: Sir, I beg to move that in clause 1 (2), lines 1 to 3, the words and figures "except Calcutta as defined by clause (11) of section 3 of the Calcutta Municipal Act, 1923," be omitted.

Sir, the primary intention of my moving this amendment is to show that all the agriculturists should come within the purview of this Act. It is a fact that a good many agriculturists who live in villages have contracted debts either for carrying on small trades or for agricultural purposes from money-lenders living in Calcutta, especially the Marwari merchants who live in this town. These agriculturists will be put to great difficulty if no relief be given to them under this Act. The sufferings of these people who have taken loans from village money-lenders are well known. If the payment of loan was made within the limits of Calcutta as defined by the Calcutta Municipal Act, certainly the cause of action will arise within Calcutta and a decree which is passed by any courts here cannot be executed in the mufassal if clause (2) of section 1 remains as it is. I am sorry to say that the debtors of co-operative societies have been practically debarred from taking any redress under this Act. And if Calcutta is excluded from this Bill, many more debtors will be disappointed.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, is the mover relevant in referring to debtors of co-operative societies?

Mr. PRESIDENT: Maulvi Abdul Hakim, you need not go into all that.

Maulvi ABDUL HAKIM: Very well, Sir. At any rate, Sir, I think that this portion "except Calcutta as defined by the Calcutta Municipal Act," should be omitted so that all agriculturists may get relief under this Act; no matter whether they have contracted loans

from money-lenders who live in villages or those who live in Calcutta. For these reasons I commend my motion to the acceptance of the House.

Mr. PRESIDENT: I think we could take up amendments Nos. 11 and 12 at this stage and have one discussion on them.

Maulvi ABDUL HAKIM: I formally move, that in clause 1 (2), line 1, for the word "except" the word "including" be substituted and at the end of this sub-clause after the figures "1923" the words "if the cause of action arises in Calcutta" be added.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, cannot the discussion on this be postponed? It has been pointed out that there may be some points in the arguments put forward

Mr. PRESIDENT: That would mean that clause 1 would not be finished to-night. I had hopes of finishing it to-day.

The Hon'ble Khwaja Sir NAZIMUDDIN: Then we can discuss amendments Nos. 13-15.

Mr. PRESIDENT: I would take amendment No. 13 separately. I would like to take No. 12 now.

The Hon'ble Khwaja Sir NAZIMUDDIN: I would like to examine the points raised in motions Nos. 11 and 12. I am afraid that there is possibility that the debt might be scaled down in the place where the debtors reside. The creditors may claim the full amount while living in Calcutta.

Mr. PRESIDENT: Anyway, it will be to your advantage if the issues involved in the motions are discussed at this stage. I may put them after you have made up your mind. I am reluctant to retard the normal progress of our business.

Babu SATISH CHANDRA RAY CHOWDHURY: Sir, I beg to move that in clause 1 (2), in line 3, after the figures "1923," the words "when both creditor and debtor ordinarily reside in Calcutta" be added.

Sir, my amendment is aimed at solving a problem. The aim of the Bill is to help the agriculturists wherever they live avoiding injury to capitalists as far as practicable. It may be in some cases that the capitalist is in Calcutta, but he advanced loans in Calcutta to agriculturists in the mufassal. The question then arises, as the Bill as at present stands, is it free from difficulties and doubts whether in such circumstances the transaction will come under the purview of this Act and *vice versa*. Suppose again the capitalist is in the mufassal and the debtors reside in Calcutta—then the question is will the jurisdiction extend to such debtors—and also supposing the debtor has begun to reside ordinarily since sometime past in Calcutta and the capitalist is in the mufassal, where the debtor originally was, what would happen in these circumstances? Would the debtor be deprived of the benefit of this Bill simply because he transferred his ordinary residence from mufassal to Calcutta and whether in other cases, where the debtor is in the mufassal but the capitalist is in Calcutta or that debtor being in the mufassal where his fellow debtor gets the full benefit of this Act, the benefit of this Act will be withheld from that particular debtor? This is a point which ought to be cleared and not left vague, particularly as the Hon'ble Member in charge would not allow any lawyers access within the precints of the sacred Settlement Board, for the elucidation of matters like this. Sir, I am not pleading for the creditors only. I only say that no injustice should be done to one debtor while others get the benefit of this

Babu JATINDRA NATH BASU: Sir, I oppose this amendment. The Hon'ble Member has pointed out that this measure is aimed entirely to relieve agricultural indebtedness, that is to say, the indebetedness of agriculturists. As in other measures relating to indebtedness the area of Calcutta was excluded for the reason that Calcutta is not the place where the agriculturists, who are intended to be benefited by the proposed measure, reside or where these transactions take place. Babu Satish Chandra Ray Chowdhury has taken it that an agriculturist may incur the debt somewhere outside Calcutta and may then transfer himself to Calcutta. Sir, an agriculturist who can afford to give up his residence in the country and to come to reside permanently in Calcutta can very well afford to do away with the benefit of this Act and therefore this particular measure is not intended for the benefit of such persons. Further, Calcutta is primarily a commercial and a business city and it would upset the entire economic order if you seek to introduce provisions which are intended exclusively for agriculturists to operate in this area. In this area the economic forces and

economic conditions are entirely different, and to try to introduce a measure for the help of persons actually engaged in agriculture to a place where there are different conditions of living altogether would be risking an experiment without first acquainting oneself with the actual effect of that kind of experiment. The Government very wisely in other similar measures excluded Calcutta, as in the Money-lenders Bill, and it would be a very rash thing if Calcutta is included. So the Select Committee has done very well in ensuring that the Calcutta area is excluded from the Bill. I therefore oppose the motion.

Maulvi SYED MAJID BAKSH: I believe the difficulty that has been suggested by some of the movers of the amendment is more or less not of very much substance. Clause 1 (2) says "The Bill extends to the whole of Bengal except Calcutta as defined by clause 11 of section 3 of the Calcutta Municipal Act, 1923." This means that the Act applies to the whole of Bengal outside Calcutta and if you look to section 9 (1) you will find that subject to provisions of section 9A (1) a debtor may make an application for the settlement of his debts to the Board established for the local area within which he ordinarily resides. Now an agriculturist who deserves special treatment under this Act is not such as has been pointed out by Mr. Ray Chowdhury. He does not ordinarily reside in Calcutta; he necessarily resides in the rural area where he cultivates his land. I believe there are some classes of persons who come within the meaning of debtors, persons who earn their livelihood from mufassal, who own lands, big landlords, not exactly agriculturists, who live in Calcutta. They will not be touched by this Act although they come within the meaning of a debtor. Having lands in the Khas Mahal areas and Sundarban areas and living in Calcutta they will not come and do not deserve to come under this Act. They are not agriculturists, so to say, they are landlords, and if they are heavily indebted, are competent to deal with debts without the help of such a legislation, I do not think the apprehension of my friend the mover will come to be proved. It does not deprive the agriculturist if he lives outside Calcutta but if he contracts a debt in Calcutta he is affected by it because the Small Cause Court will operate a decree. That decree may also be a subject of action taken by the Board established in rural area. If the Act is passed, the Board will not be able to take action on it. The Board will be established in rural areas. Generally all agriculturists live in rural areas and those decrees will be a subject of compensation by the Board established in rural areas. If the agriculturists and creditors live in Calcutta, of course in that case it does not apply. If the agriculturist is rich enough to live in Calcutta and goes about outside Calcutta and cultivates his land, that is not the sort of agriculturist to whom any amenities under this Act will apply. The sugges-

apply to agriculturists who contract a debt outside Calcutta who will be entitled to relief under section 9. So the apprehension is not right.

Dr. NARESH CHANDRA SEN GUPTA: The real difficulty lies in this. Suppose an agriculturist from the mufassal—say a tenant from Sunderbans—comes to Calcutta to his landlord or *zemindar* of Sunderbans and borrows a sum of money, the cause of action has arisen in Calcutta and a suit is brought against the tenant in the Small Cause Court or in the Original Side of the Calcutta High Court and a decree is passed. If the person happens to be resident of Calcutta as an ordinary resident and is sometimes out of its jurisdiction, that decree may be executed without being a subject matter of this Act at all. Section 28 of the Act which prevents the entertainment of an application in respect of a debtor or of any debt under section 9, would not apply to Calcutta. Therefore the decree will be passed and it will be executed against him. For that purpose it is necessary that Calcutta should not be excluded for the purpose of this Bill in order to make section 28 applicable. But of course extension of the Act to Calcutta does not mean that any and everybody will go to a Board. It will be the discretion of the Local Government to appoint the Board and naturally Government will not appoint a Board in Calcutta. The only effect of including Calcutta would be that the work of the Board will be hampered by a decree obtained in Calcutta. (A VOICE: That will not be within the purview of the Act.)

The Hon'ble Khwaja Sir NAZIMUDDIN: I am afraid the difficulty that has been pointed out by Dr. Sen Gupta is genuine and we have been advised that it is possible that while a Board in the mufassal may reduce the debt of a debtor if the creditor happens to reside in Calcutta he may be able to get a decree in a Calcutta Court and execute that decree in spite of the fact that the Act applies to mufassal. Therefore the Government are prepared to accept the amendment of Maulvi Abdul Hakim for the inclusion of Calcutta. At the same time we give an undertaking that no Board will be appointed in Calcutta, that is to say, under clause 1 (3) which says that "it shall come into force in such areas and on such dates as the Local Government may, by notification, direct" and so it is within the power of Government not to appoint any Board in Calcutta. Apart from this, Calcutta will not be affected by this Act in any way whatsoever. If there is no Board the rest of the provisions of this Act cannot apply.

Mr. P. BANERJI: I am glad that the Hon'ble Member has just

much emphasis just at the beginning. I may say that I consider such a proposition as absurd and impracticable. For instance, it has been suggested that persons who are able to come to Calcutta to contract loans they may also be termed agriculturists. Is it possible even in a thousand for an agriculturist to be not available? It is quite certain that agriculturists will come from different places, say, from Mymensingh, to contract loans and then go back there. Will the Hon'ble Member call them agriculturists to give them the necessary relief under this Act? Certainly not, but that is what the Hon'ble Member means. That being the case and as Calcutta has always been exempted from the operations of similar Acts (I mean the Money-lenders Act) I do not know why in this particular case also Calcutta should not be exempted. And the Hon'ble Member has given us an assurance that no Board will be established in Calcutta, but I am not so sure that we can rely on that assurance. Why not say so in the Act itself? What is the good of accepting this motion and not sticking to the gun which he used at the beginning? I oppose the amendment.

The motion of Maulvi Abdul Hakim being put, a division was taken with the following result:—

AYES.

Ahmed, Khan Bahadur Maulvi Emaduddin.
Bahab, Maulvi Syed Majid.
Bal, Babu Lalit Kumar.
Bal, Rai Bahadur Sarat Chandra.
Barma, Rai Sahib Panchanan.
Basu, Mr. S.
Chanda, Mr. Aparva Kumar.
Chaudhuri, Babu Kishori Mohan.
Chowdhury, Maulvi Abdul Ghani.
Das, Babu Gurupresad.
Farequi, the Hon'ble Nawab K. G. M., of Rutanpur.
Fazlullah, Maulvi Muhammad.
Gilchrist, Mr. R. N.
Graham, Mr. H.
Hakim, Maulvi Abdul.
Haldar, Mr. S. K.
Haque, the Hon'ble Khan Bahadur M. Azizul.
Hogg, Mr. G. P.
Haque, Kazi Emdadul.
Khan, Maulvi Abi Abdulla.
Khan, Mr. Razaur Rahman.
Khan, Maulvi Tamizuddin.
Lamb, Mr. T.
Lesson, Mr. G. W.
Martin, Mr. C. M.
Mittar, Mr. S. C.
Mullick, Mr. Mahanda Sahary.
Nazimuddin, the Hon'ble Khwaja Sir.
Porter, Mr. A. E.
Quasem, Maulvi Abul.
Rahman, Maulvi Azizur.
Ray, Baba Amulyadhan.
Ray, Babu Nagendra Narayan.
Ray, Chowdhury, Babu Satish Chandra.
Reid, the Hon'ble Mr. R. N.
Rexburgh, Mr. T. Y. J.
Ray, the Hon'ble Sir Bijay Prasad Singh.
Ray Chaudhuri, Babu Ham Chandra,
Sachse, Mr. F. A.
Sahana, Rai Bahadur Satya Kishar.
Samad, Maulvi Abdus.
Sen Gupta, Dr. Naresh Chandra.
Shah, Maulvi Abdul Hamid.
Singha, Babu Kshetra Nath.
Stevens, Mr. J. W. R.
Stevens, Mr. H. S. E.
Townsend, Mr. H. P. V.
Walker, Mr. J. R.
Woodhead, the Hon'ble Sir John.
Wordsworth, Mr. W. C.

NOES.

Banerji, Mr. P.
Basu, Babu Jogindra Nath.
Bose, Mr. S. M.
Roy, Mr. Sailesswar Singh.
Roy, Mr. Saral Kumar.
Sen, Rai Bahadur Akshoy Kumar.
Singh, Srijut Taj Bahadur.

The Ayes being 50 and the Noes 7, the amendment was carried.

Mr. PRESIDENT: I think the House will agree with me that amendments Nos. 11-12 and 13-15 do not arise and fall to the ground automatically. It is no good taking up a new amendment to-day.

Mr. PRESIDENT: Order, order, the Council stands adjourned till 2 p.m. to-morrow, the 28th November.

Adjournment.

The Council was then adjuorned till 2 p.m. on Wednesday, the 28th November, 1935, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Thursday, the 28th November, 1935, at 3 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHOWDHURY, of Santosh) in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers and 82 nominated and elected members.

GOVERNMENT BUSINESS

LEGISLATIVE BUSINESS

GOVERNMENT BILL.

The Bengal Agricultural Debtor's Bill, 1935.

(Discussion on the Bengal Agricultural Debtor's Bill, 1935, was resumed.)

Mr. W. C. WORDSWORTH: Mr. President, Sir, I beg to move that in clause 1 (2) the words "till the end of 1940" be added.

The House is generally aware, I hope, that the Bengal Chamber of Commerce gave diligent study to this measure, seeing in it both great potentialities of good and great possibilities of evil, and as a Chamber member, I should acknowledge with gratitude the earnest consideration that the Select Committee gave to all the suggestions the Chamber put before it, and the ready welcome that it extended to nearly all of them. According to the Chamber's reading, the Bill is both in essence and in intention a temporary measure, caused by the emergency of the last few years of depression, and it is the Chamber's view that this character should be recognised in the Bill in every possible manner. It is recognised in many proposed amendments, and my amendment suggests one more recognition. That this Bill that we are dealing with is a purely emergency measure, will not commend itself to all members of this House. When we discussed the Bill on its introduction, some members put forward the other view, and I remember that my friend, Mr. Abul Kasem, in his able manner, insisted that the peasantry of Bengal are deeply in debt, have always been deeply in debt, and unfortunately will always be deeply in debt and since that debt is a permanent feature of our social and economic structure, we should preserve this Bill as a permanent

weapon to fight it. The view of the Chamber is that this Bill is not so much a combatant weapon as a surgical instrument. We have been through some peculiarly difficult years, and a consequence of these peculiarly difficult years is that the supply of rural credit is in danger of drying up, and the Bill, in the Chamber's opinion, has been devised to meet that danger. Creditors may be asked to agree to a considerable inroad upon their rights as part of one heroic measure to bring the province back to better health, but it would be manifestly a different matter to invite them to accept these liabilities and obligations as a permanent feature of the conditions under which we live. That would alarm the creditor, and tend to dry up the supply of credit. Our agriculture cannot subsist without regular supplies of credit, and we want to see willing lenders as well as willing borrowers. Co-operative credit has done much, but we all know that it has not yet done nearly all that we think it will be able to do; it has not yet displaced India's traditional method of supplying capital to small agriculturists. Here all students of these difficult matters will join with me in expressing gratitude to the Economic Board for their admirable report on which the Bill is based, and to many members of this House for their valuable comments on the Bill: especially I may refer to the admirable notes put before us by Babu Khetter Mohan Ray. That, Sir, is one aspect of my argument. Another aspect is this. We can all draw up a long list of statutes to which we in this Council have given much time and care, but which are operative only in theory. This Bill is an important measure intended for important purposes, and we should do all that we can to ensure that once it is passed it shall receive prompt attention and will be put promptly into operation. My proposal, therefore, is that Government should be called upon to do all that it intends to do within five years, after which the Act should cease to exist, and if anything further is wanted, we shall attend to the problem again. Five years, I would suggest, are not too little. The effort should be made at once. Surgery, and this is surgery, should not be a dilatory business. There is some assurance of prompt action in the provision that the debtor shall apply to a Board once only, once and for all. More than that is possible, and there are amendments later proposing that there shall be a time-limit for the existence of a Board. My proposal is in keeping with this. If we have a five years' existence of the whole measure and three years' operation for a Board, that would, I imagine, be a satisfactory arrangement. Mr. Thompson suggests seven years and his seven years would be consistent with five years' operation of a Board. I propose my amendment in the hope that something will be done at this stage of the Bill to emphasise that we are dealing with a purely temporary measure.

Babu SATISH CHANDRA RAY CHOWDHURY: Sir, I beg to support the amendment moved by Mr. Wordsworth, and in doing so I

must first of all thank the Chamber of Commerce for the dispassionate view they have taken of the measure, and for their drawing attention of the House to the fact that this is an emergent measure. Sir, we can tolerate a measure like this only if it is an emergent measure, as we are all anxious to see that the past debt incurred by an agriculturist which is a heavy burden on him and which is retarding his progress should, as far as practicable, be reduced. But if this Bill becomes a permanent feature of the statute book, we shall have nothing but a communist outlook altogther, and in some respects, I should say, it will be even worse than communism. For, in communistic societies, there are good features as well as bad; there lands are nationalised, agriculture and industry are nationalised, and every man expects to have a fair deal in the society. But here we are going to create a society where nobody will have a fair deal, but everybody will be in a state of suspense and uncertainty. This measure, if it is allowed to last longer than is essentially necessary, will bring about a grave position in society in which nobody will be anxious to discharge his obligations, and borrowers there will be, but lenders there will be none. A situation will arise when practically all the other laws will remain suspended, and all important matters vitally affecting all sections of people will be left in the hands of a Board or coterie about the qualifications of whose members we know nothing. All that we know is that they may be quite innocent in the matter of law, that they may be swayed by considerations other than that of doing justice between man and man. All that we know is that in such a society universities will be turning out every year quite a large number of graduates in law, but these men, with flowing robes and full legal views and maxims, will be debarred from practising the art they have been permitted to learn, and will be only swelling the ranks of the unemployed in the country. In fact, if there is one institution in the British system of administration which has been appreciated by the people of this country, it is the British system of justice. Whatever may be our choice in other matters, we will not be willing to part with the British system of justice, unless forced by circumstances to part with it. This being the state of things, I submit, if you want to restore confidence, if you want to restore credit, and at the same time want to do something to relieve the agriculturist of his debts, the best that you can do is to shorten the period of life of this Bill. We had been discussing a kindred Bill the other day—I mean the Court of Wards (Amendment) Bill. In that case also, the Chamber of Commerce approached the subject from a national and consistent point of view and pleaded for justice, both to the debtor and to the creditor. Under the circumstances, the attempt of the Bengal Chamber of Commerce to limit the life of the Bill to a certain definite period is a reasonable compromise between two extreme views. If you want to make the Bill a permanent feature of the law, I can make a prediction that you will thereby

create a most difficult situation even for the agriculturist as the credit of the agriculturists will be entirely ruined then. They will not get any more money from their present creditors, and you are not setting up any other machinery to come to their rescue. I would ask the friends of the agriculturists to remember well this blank prospect of the agriculturists as a result of this Bill being made permanent, and I would ask them not to take that serious risk. The Hon'ble Member told us the other day that he did not want that this should be a permanent feature of the statute book; on the other hand, he assured us that if the Board did not do its work, it would be abolished, as had been provided for in clause 9 (7). In clause 9 (7), it is laid down that "a Board shall not entertain any further application for the settlement of any debt which has been incurred by a debtor . . . ." But clause 9 (7) hardly meets the case. If after making his application to the Board the debtor goes to a creditor and asks for a further loan, the creditor will certainly refuse as he has also to look to the heirs for fulfilling the promise and for its realisation; the debtor may not live for a long time, and what will happen then? The heirs can go to the Board, and make a further application for loan. Therefore, clause 9 (7) does not meet the case fully. If it is your desire that the Bill should have a limited operation, I think the whole thing should be put in an appropriate way in the statute book so that there can be no mistake in it. We want an assurance from the Hon'ble Member that the Boards will be closed down as soon as they have performed their part after a specified period. It may be said that Government may not find money enough forthwith to proceed with the operations of the Bill, and that it may take some time. The amendment suggested gives a life of five years, and I consider that that is a pretty long time in which matters ought to be arranged. If the debtor is groaning under a burden of debt, and if he is really anxious that he should escape from his present deplorable position, it is quite natural that he will forthwith put in his application. But if he does not take advantage of the provisions of this Bill, say, even after three or four years, he cannot have any grievance if the operation of the Act ceases to exist. So, it is more with a view to restoring the credit and confidence, it is more with a view to restoring the operations of the ordinary laws of the land, and it is more with a view to improving matters that this particular amendment, moved from a section against which nothing can be said, and no charge can be levelled as being prejudiced, should be accepted. I earnestly appeal to Government, and I earnestly appeal to the Hon'ble Member in charge, to consider whether this amendment ought not to be accepted in the interest of all parties. With these words, Sir, I lend my strongest support to the amendment.

Mr. H. P. V. TOWNEND: With your permission, Sir, I would at this stage explain the technical reason why Government are not in a

position to accept this amendment, in order to shorten the discussion. The thing is that if we provide that the Act will cease to have effect after 1940, everything that had been done under the Act before then would be wasted work: any awards made would be without effect. The operations of all the sections of the Act would automatically stop. There would be no further power to collect anything under the provisions of the Act, and the whole Act would be infructuous. It would be impossible within five years to clear off all the debts of a debtor. The work must go on for, say, 10, 15 or 20 years after an award. What the persons who object to the Bill dislike is really the idea that applications should be received indefinitely: but the proper place for the discussion of that matter is not here, but clause 9. The Select Committee, in order to meet the difficulty under discussion, provided that a further application should not be made by any applicant regarding new debts: the objection raised to this is that years after applications had been dealt with a fresh set of applicants, successors of the first set, might come forward with new applications. There is an amendment on this specific point, and I would suggest that the discussion of the matter might be left till that amendment be reached, and not be dealt with now. We cannot accept this particular amendment.

Mr. W. H. THOMPSON: I could not follow Mr. Townend's explanation. I gather what he meant was that anything done under this Act would lose its effect as soon as the Act expired. That we cannot accept. An order passed under this Act would not be cancelled on the date of expiry of the Act. After the period the Act is in effect, an award made under this Act stands, binding upon the parties, and anything ordered to be done under the Act will have effect, no matter whether the Act passes away in the mean time or not.

Mr. H. P. V. TOWNEND: What I mean to suggest is that the machinery for enforcing the order under the Act will be automatically abolished after five years: it is not only my opinion but it is also the legal opinion,— we have consulted lawyers on the point.

Mr. S. M. BOSE: Sir, I beg to support this amendment. We all know that this is a purely emergency measure, and that it should never be made permanent. People should know that it is their duty to pay off their debts. That should be enforced, but having regard to the very special circumstances prevailing, it is desirable that certain measures of a temporary character should be enacted as would give some relief to the debtors. I am well aware of the provision in clause 9 (7) which says that every debtor can apply to the Board once, and no more. But that does not prevent applications pouring in at all times. "A" may apply in 1935, "B" may apply in 1940, but "C" may apply in 1965, and there is nothing to prevent them from doing so. In that

case, we must have a permanent Board which is certainly opposed to the very principles of the Bill. This is a purely emergent measure; further, it is a very novel, an unheard of piece of legislation. We are making new history in legislation. All our preconceived ideas and conceptions of the principles of law must go with the enactment of this measure. We must have some time to see how this novel experiment works, and for that reason it is of the utmost importance that a time-limit should be fixed so that it can be stopped, should occasion demand it. We are going to interfere with the normal economic laws of the land which is only justified by the special circumstances existing at present. We have just heard that there is legal objection to a time-limit being fixed; that if this Bill ceases to exist after 1940, what will be the position of applications and awards made in 1939? I say one additional clause for the purpose will meet the case, and I am loath to think that it is beyond the power of the legal advisers of Government to draft such a clause. Sir, we have a similar provision here in the Bill, namely, that where a Board has ceased to exist, some officer authorised by Government will go on doing the work of the Board. Why can't a similar provision be applied in this case? I, therefore, fail to understand the legal objection to which so much importance has been given. To my mind, it has no substance, and I, therefore, refuse to be at all frightened by the question of legal objection mentioned.

Sir, I support the amendment.

Mr. ANANDA MOHAN PODDAR: Sir, this measure after all is an experiment and has been introduced to meet an emergency which has arisen in the country out of the economic depression since 1929. An emergent measure cannot be allowed to stay permanently in the statute book. It should be restricted to a period during which the emergency is expected to last. If it lasts longer, fresh measures can be brought in in accordance with new experiences gained and the future condition of the country.

If efficient Boards are constituted, and if they take up the work in right earnest and in a business-like way, we can expect that they will be able to complete their work within five years. But if they are allowed to work indefinitely without any time-limit, that will rather retard the progress of work. In that case, the debtors, I apprehend, will be very slow to come to the Boards and their habilities will go on increasing. So, I am in favour of its restriction to a certain period. For these reasons I am quite in favour of getting this measure restricted to a period of five years only.

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur: I rise to support the motion, specially in so far as the intention of the mover is concerned, namely, that it should be a temporary measure. This Bill has been brought forward only to give relief to agricultural

tenants on the ground of the prevalent economic distress. We are grateful to the Government that they have come forward with this Bill. But I can say that neither the Government themselves, nor we, the members of this House, had any idea that the measure should be of a permanent nature. If it is made permanent, it will destroy rural credit to a great extent. The Select Committee also realised that fact and said that if the Bill were of a permanent nature, it would destroy rural credit and that is why they have restricted clause 9 by saying that a debtor who has once applied will not be allowed to come again for relief, but that will not be sufficient for our purpose. For this reason, I think this Bill should not be of a permanent nature.

No question of this nature would arise if the Government would prepare to come forward with ready money to liquidate the debts as in the case of Bhownagar State where this idea was first creeped in and followed practically. Amongst other measures adopted to relieve the debt-oppressed *khedu* (agriculturist), the Bhownagar Durbar sanctioned a debt redemption scheme depending for its application on the voluntary co-operation of the *sowcars* (money-lenders) and the indebted *khedu*. But the Durbar was not satisfied by merely passing a new law, but as a measure of practical relief, the Durbar had sanctioned some money to pay off the debts. The nominal outstanding arrears shown as owing by *khedus* in *sowcars'* books amounted to Rs. 86,38,000, and the same have been compounded and compromised under the scheme by the Durbar, paying on behalf of the indebted *khedus* Rs. 20,59,000. This is the practical way of solving this great problem of problems. If the Government want to give the full benefit of the Bill to the indebted agriculturists, they must provide a loan from the Government of India at the usual interest of 3 per cent. and then they can lend the money to the agriculturists by way of settling their debts at a higher rate of interest.

As regards the legal difficulties, as I am not a lawyer, I cannot suggest how the clause should be drafted so as to make it legally effective. But the legal experts of the Government will find a suitable legal phraseology to serve our purpose. What I intend to say is that five years' time is quite sufficient for the purpose of receiving the applications from the debtors who are at present in distress. Pending cases, of course, should be continued until they have been disposed of finally. The Government of Bengal, therefore, can afford to act on the lines Mr. Thompson has suggested, namely, that pending and other cases should be continued; and receipt of applications should be restricted to five years only. This will satisfy the House. Otherwise, if the intention of the mover is that all applications and pending cases shall cease in 1942, then we shall be doing a great harm to those rural debtors. To make a halt after five years in whatever stage the cases may be pending will upset the whole credit. Both the creditors and

the debtors will suffer. If the force of the law is automatically exhausted in 1942, then proceedings under the Act in different stages will also lapse and no relief will be available even to those who may have filed their applications before 1942.

Babu KISHORI MOHAN CHAUDHURI: I also support the motion. In the teeth of serious opposition this Bill is going to be enacted into law which we think should be temporary in nature. In the meantime, if we find that it is really beneficial to the debtors and not detrimental to the best interest of the *mahajans* or if no serious difficulty arises on account of the ill-feeling created between the *mahajans* and the debtors, then only it may be a permanent measure. But if we find that there is any real cause for apprehension, it should not be continued but should cease to exist. Of course, I support the views of the Raja Bahadur that applications may be made up to five years; all the applications received in the meantime will be considered but no new applications will be entertained. With these observations I support the motion.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: I have heard the speeches so far delivered with great care, but I am sorry that the arguments that have been advanced by the different speakers could not convince me that this proposal to restrict the Act up to the year 1942 is a sound one. The proposition before the House is clear and simple. It says that the Bill should be for five years only; it does not say that it should be of a temporary nature, that, if necessary, it may be extended after five years. So purely and simply, the question before us is, as the motion stands, whether this 5-year's motion, should be supported by any one of us. Anybody who knows the intricacies of public affairs will at once admit that Government is always slow to move. One cannot expect Government to make a start with all these boards all at once in every part and in every corner of this country. Government's movement being slow, it will take them some years to finish the programme for even the establishment of such boards. If my friends who have spoken think that in a minute's time all the boards will begin to function, I think they are wrong. Further, I do not think that the Chambers of Commerce should exercise their brain very much in a matter in which they ought not to poke their nose; they are not at all affected by this Bill. On the other hand, if anybody had read the report that has come from the Marwari Chamber of Commerce, he will find that that body is absolutely fair. They say that they have simply nothing to do with this matter and so it may be decided by others. Exactly in the same strain the Bengal Chamber of Commerce could have followed the Marwari Chamber of Commerce. But when they have once entered into it I want to tell them through this House that this situation is their own creation. If they had not combined in

bringing down the price of jute, if they had given a fair price for jute, this state of affairs would have never arisen and the country, specially Bengal, would not have suffered so much. I have heard one of the members of this House speaking to another member: "Well, Rs. 3 is the cost of producing jute per maund; suppose Rs. 3-6 is paid," it is all right. How strange, Sir, Rs. 3-6 for one maund of jute! I could not think of it. That is the way, Sir, in which they view these things. So, as they themselves have created this state of affairs, why should they not now consider it in this way: "The people have come to this state, let us be fair; let us say that instead of 5 years, 20 years or some more time be given." In that case we could have considered their opinion favourably. But 5 years is so small a period of time that I think that anybody who knows the machinery of Government as well as the ways of Government will at once say this is an impossible provision: how can 4 years' or 5 years' time be considered a proper time for such a huge thing? So it comes to this, that we cannot support this motion. In to-day's papers I was reading that the Government of India recognise that the value of our crops has deteriorated by 54 per cent., so that it means that we are just getting 46 per cent. of what we were getting in 1929. That is not our income, as we have got to pay revenue, rent, etc., in areas which are rather unfortunately not permanently settled double or treble of what we were paying before. The Government of India and with them the Government of Bengal should also admit that the people's income has come to nothing. That being the position, it will be—I should not use any language which may be misunderstood—it will not be right for any one of us to say that in 5 years' time things will brighten up to such an extent that there will be no necessity for a law like this. So five years seems to be a very limited period. If you say 20 years, which is the period within which the money should be paid, the matter may be considered by all of us, but in any case five years is not at all an adequate time, or even seven years.

Section 9 (7) as Mr Ray Chowdhury has pointed out, explicitly says that a board shall not entertain any further application for the settlement of any debt which has been incurred by a debtor after the date of application under sub-section (*1*) or sub-section (*3*). If there is any apprehension in the mind of anybody that a debtor will go twice before a board for the settlement of any debt, there will be a case for amending the law and so long as the law is there, it is impossible for the debtor to go twice. It means only this, that the present debt is hanging heavily on the people of Bengal and it is due to abnormal causes. The provision of this Bill is simply this—you come in once and the matter will be composed. But I can tell you, Sir, that there is no necessity for anybody to be alarmed. Although I have not read the whole of the Bill, as far as I have been able to understand the provisions, they amount to this, that if 40 per cent. of the creditors

agree to a certain proposal, then only effect can be given to it. But if the creditors disagree, the debtors will have to go to Court. So this is a matter—I speak subject to correction and I wish I am wrong—if 40 per cent. will not combine, the debtors will have no relief. Why should it be ever considered that there would be great harm done by this Bill? The creditors and debtors are only asked to compose their affairs amongst themselves through a third party——

(At this state the member having reached the time-limit had to resume his seat.)

Mr. PRESIDENT: As I have to put this amendment in the form of a question, it is necessary that the House should fully realise what is at the back of the mind of the mover. Is it his intention to throw the Bill out of gear altogether at the end of 1940, or that it should cease to extend to the whole of Bengal after 1940 and thereafter Government will have power to extend it to certain portions of the Presidency only?

Mr. W. C. WORDSWORTH: Sir, my proposal is that the Bill shall have operation until the end of 1940.

Mr. PRESIDENT: Will the amendment serve your purpose if it is added to clause 1 (2) as you desire? I am afraid you have misplaced it. You should have in that case asked the House to add it to sub-clause (3). Of course, it is for you to consider and judge which is the proper place

Mr. W. C. WORDSWORTH: The intention of the amendment is to put it into operation everywhere. I would, however, leave the question to the House.

Maulvi TAMIZUDDIN KHAN: Sir, I find myself in perfect agreement with everything that Mr Wordsworth has said with regard to his motion. But unfortunately I cannot support his amendment. There is a striking unanimity in this House as to the question that this measure should not be a permanent one and that it is an emergent one. But the question now is whether it would be practicable and advisable to restrict the operations of the Act only to 5 years. That raises the question whether this is the proper place where this amendment should be brought in. In my opinion, Sir, this amendment is misplaced and that it should be placed somewhere else. Mr. Townend has already pointed out that if this measure is to expire after five years, the various acts done by the Boards and other bodies to be constituted under this Act will be nullified with the expiry of the Act. So far as that is concerned, Mr. Thompson thinks that the acts

done by the Board will still be in force, although the Boards may not exist and the Act itself may not be existent. Sir, that is a legal question on which we are told that Government experts have already expressed their opinion and that opinion is against the opinion given by Mr. Thompson. I should be inclined to accept the opinion of the Government expert as the correct one. That being so, the amendment of Mr. Wordsworth cannot be supported. I would, in this connection, point out certain provisions of the Bill. If you look at the insolvency provisions, you will find that it is provided there that if a man is declared insolvent and acquires any property within 5 years, of the date of declaration then that property may be available to the creditors for the liquidation of the debts. In that case the creditors will have to apply to the Boards and that may be within 5 years of the date, on which the man is declared an insolvent That presupposes that the Act must be in operation till 5 years after the date of such declaration, which must be some years after the passing of this Act. Therefore, if Mr Wordsworth's amendment is carried, various complications will arise and it will be difficult to put this Act into operation and continue its operation But as I have already stated, the object of Mr Wordsworth is that this measure should not be a permanent measure and that is in a manner provided for in the Bill. It has been pointed out by Mr. Ray Chowdhury that under the provisions of the Bill a debtor cannot apply for the liquidation of his debts more than once under ordinary circumstances. That is to my mind a real safeguard. But if it is necessary to make it more clear, I think something can be provided in this way: that debtors should not be allowed to make application for the settlement of their debts after a certain time after the establishment of Boards in a particular area. If that is done, then it will serve the purpose of everyone who is anxious to see that this measure may not be a permanent one. The amendment as tabled by Mr. Wordsworth cannot be supported.

In this connection I should like to say a few words regarding what Mr. Ray Chowdhury has said. He seemed to be troubled with the communistic bogey. He says that the way in which the Bill is being enacted will prove detrimental to the interests of the people of Bengal (Babu Satish Chandra Ray Chowdhury: That's a permanent feature.) It is not the intention of the Government to make it a permanent feature and his apprehensions are altogether unfounded. I would rather like to point out to him that if nothing is done for the agriculturist and for the poor teeming millions of the country that would be the surest way of bringing in communism. How does communism spread amongst the people? It is those people who have no stake in the country that are most easily affected by communism. If we make the agriculturists landless, they will be more prone to communistic influences. I admit that they cannot for ever be in possession

of all the lands they have now. Some of these they will certainly lose. But it is the duty of the Government and of all the well-wishers of the country to see that the agriculturists do not become landless labourers. Mr. Ray Chowdhury has given a timely warning, but the warning lies the other way. If this measure be not sufficient, a measure may have to be passed in future, providing that lands of agriculturists may not pass into the hands of non-agriculturists. There is already a legislation like that in the Punjab and there may arise a necessity for such an enactment in this province, but we hope that by the operation of the measure before us it may not be necessary to pass a drastic measure like that. Mr. Ray Chowdhury is absolutely mistaken in regard to his communistic fears.

Babu JATINDRA NATH BASU: Sir, Mr. Tamizuddin Khan and other speakers are all agreed that the measure is intended to be a temporary measure, to remain in force during the period of economic difficulty that we are passing through. The trouble about working the measure, to which attention has been drawn by Mr. Tamizuddin Khan, may be obviated by an amendment to clause 9 (2). It may be provided that subject to the provisions of section 9 (A), a debtor may within 5 years only from the date when this Act comes into operation make an application to have his debts adjusted. This will enable the Board to continue functioning so far as the debts that are before it are concerned. But after a period of 5 years from the commencement of the Act, the Board will not receive any new applications. So, I think, if you allow a short-notice amendment to be moved——

Mr. PRESIDENT: What about the amendment now before us? Is it going to be withdrawn?

Babu JATINDRA NATH BASU: Sir, if you allow this short-notice amendment——

Mr. PRESIDENT: I think your short-notice amendment should be taken when clause 9 is reached if the amendment now before the House is withdrawn.

Babu JATINDRA NATH BASU: Sir, I may inform you that both the debtors and creditors will be entitled to submit their cases before a Board within 5 years from the commencement of the operations of this Act and the Boards will function thereafter to deal with the matters already before them, but will not receive new applications after 5 years.

The Hon'ble Khwaja Sir NAZIMUDDIN. Sir, I want to make it quite clear once more that Government never intended this Act to be a permanent measure and we were quite certain as far as we were concerned that the Bill before the Council was to be in the nature of a temporary measure, but in view of the very great desire on the part of the members of the European Group and certain members of the Select Committee, in the Select Committee a suggestion was put up by me which was unanimously accepted and as far as I remember no one had any doubt that by accepting the provision, viz., the one we have provided in clause 9 (7), we have made it quite sure that this Act is going to be a temporary measure and there need be no apprehension that it will be a permanent measure, but now the representatives of the Chamber have put in an amendment which, it is obvious, if carried without any other modification whatever, or any other suggestions, or any other amendment later on, will mean that you want to make the whole Act absolutely inoperative and useless. In spite of Mr. Thompson losing his temper, I can tell him there can be no question whatever that unless you make some further provision of some sort the amendment which has been put in will mean that in 1940 all Boards will cease to operate, and whatever orders may have been passed, no instalments can be imposed, and the work of the Settlement Board cannot go on, so it will mean that the whole scheme of this Act will have to be closed down within 5 years, and if anything goes over, it will all have to go. So I think evidently between Mr. Wordsworth, who wants Government to bring this Act into operation as soon as possible, and Mr. Thompson, who wants that this Act must be absolutely temporary, the suggested amendments, if accepted and carried, will mean that the whole Act will be absolutely useless. So I again request the House and would ask them first of all to withdraw the amendments in view of my explanation. If they are not willing, I would ask the House to reject them.

As regards Mr. Basu's suggestion, I think we ought to consider this later on; after proper drafting it can be put and Government will be prepared to consider it.

Mr. W. C. WORDSWORTH. I can acquiesce though I am not convinced. If those who have supported my motion agree, I will withdraw it and leave further discussion of the matter until we come to consider Mr. Basu's proviso, in case that is accepted.

Mr. PRESIDENT: Are you asking leave of the House to withdraw?

Mr. W. C. WORDSWORTH: If those who have supported——

Mr. PRESIDENT: You must make up your mind once for all. You cannot make any condition. No conditionable withdrawal is permissible. Do you ask leave of the House to withdraw?

Mr. WORDSWORTH: Yes, I ask leave of the House to withdraw.

The amendment was, by leave of the House, withdrawn.

Maulvi ABDUL HAKIM: I beg to move that clause 1 (*3*), in line 1, after the word "force" for the words "in such areas on such dates as the Local Government may by notification direct" the words "at once" be substituted.

Sir, I have brought this amendment to draw the special attention of Government for immediately bringing into operation the provisions of the Bill which are urgently meant for safeguarding the interests of the heavily indebted agricultural people of this province. If the operation of this Bill is delayed even for six months or one year, a large number of indebted agriculturists would be ruined for ever at the hands of their money-lenders. I can assert in this House that as soon as this Bill has been put to the legislative anvil, a large number of money-lenders have brought suits or started execution cases not only in my district but all over the province for realising money from their debtors before the passing of the Bill And some of them have gone so far that they have made prayers for attachment before judgment. From such an attitude of the money-lenders, I have every reason to suspect that lands of thousands of agriculturists would be put up to auction sale if the operation of this Act is delayed by six months or a year. There is no gainsaying that the agriculturists of Bengal are the worst sufferers among the living people of this world. The rate of fall in the prices of their agricultural produce is more rapid than the rate of fall in the price of manufactured articles. They are burdened with a load of debt which is heavier here than anywhere else in the world. They are starving and are grim and silent in their suffering without any hope of enjoyment. They are living because they are born in this world and dying because life could no longer be kept in the body. In fact, they exist rather than live and the margin between starvation and existence is very small.

The Hon'ble Member in charge of the Bill may say that my amendment is a very peculiar one, but at the same breath I may also say that the very Bill is a peculiar one, the like of which was nowhere to be found in the statute book throughout the Empire. After all, if Government really intend to save the indebted agriculturists the provisions of this Bill should be brought into operation at once. If all the provisions cannot be brought into operation simultaneously, sections 19 and 20 should at least be brought into operation within a short time after the passing of this Bill. The later part of section 20

says that if there is no award, no creditor would be able to execute any decree for the recovery of debts until the expiry of a period not exceeding ten years. In my opinion this will serve as a moratorium for the helpless debtors even if other provisions of the Bill come into operation after an interval of a few months or so. Sir, by the words "at once" I practically mean "at the earliest possible hour." When Government wishes to promulgate any ordinance, Government do it within a week or two from the day of its contemplation. I appeal to Government with all earnestness at my command that in the same way Government should bring this Act into operation with the hastiness of an ordinance to save the hopelessly indebted agriculturists of Bengal. By passing an ordinance Government seek to save a few public servants, while by passing this Bill Government would save millions or rather crores of dying people of Bengal. Surely, it is a measure more emergent than all ordinances that have been passed till the present day. In fact, by the words "at once" used in my amendment, I mean the hastiness with which an ordinance is generally brought into operation. The House is well aware that the scheme of land mortgage banks was sanctioned more than two years ago, but I can say to the best of my recollection that during this long time only three land mortgage banks are working in the province and only few thousands of rupees have been paid to a limited number of debtors and many agricultural people have been ruined, cherishing false hope of getting loans from these land mortgage banks. In these circumstances, I have every reason to bring such an amendment in this Bill for the immediate salvation of the agricultural people of Bengal.

With these words I commend my motion to the acceptance of the House.

The Hon'ble Khwaja Sir NAZIMUDDIN: This is another amendment with a very laudable object, but one which I am afraid the mover does not recognise how impossible it is to give effect to. You cannot bring an Act of this kind simultaneously all over Bengal into operation at once; power must be left in the hands of the Government to bring this Act into force as soon as possible in areas to be selected by them and according to their convenience. In one or two places you may be able to get a Board easily appointed; in other places you may have difficulty. There must be power to enforce the thing as Government think it possible or desirable, and therefore, although I have every sympathy with the motion and the object of Maulvi Hakim, from a practical point of view it is essential that there should be no amendment to the clause as it stands at present in the Bill.

The amendment was put and lost.

The question that clause 1, as amended, stand part of the Bill, was put and agreed to.

Babu KISHORI MOHAN CHAUDHURI: Should this amendment of mine, No. 29 be considered now, or after the other clauses are taken up, or at this stage in anticipation of the other clauses? I have some doubt. However, I move my amendment. It refers to some other clauses as well. Sir, I beg to move that——

Mr. H. P. V. TOWNEND: I think this should be postponed till the connected amendments are dealt with. This is consequential on amendment No. 632. The definition may be taken up after that amendment has been decided.

Mr. PRESIDENT: I agree that this should not be taken at this stage. Kishori Babu may await the fate of the amendment to which Mr. Townend has just referred.

Babu KISHORI MOHAN CHAUDHURI: Yes. I do not move this.

Mr. S. M. BOSE: I beg to move that in clause 2 (*3*), after the words "an officer," the following be added, namely:—

"who shall be a person of not less than ten years' experience as a judicial officer, administering civil justice"

My amendment is to the effect that the Chairman of the Board shall have, first of all, certain qualifications laid down in the Act and not by rule, and, secondly, that he should be a person of not less than 10 years' experience as a judicial officer, administering civil justice. The Board will have a great many things to do. As regards the appellate officer, I say that his qualification should be laid down in the Act itself and not left to be decided by Government, and further that he shall be a judicial officer of not less than 10 years' experience. That officer will have very many difficult questions of law to decide. He shall have to decide on questions of mortgage, priority, etc., so it is of the utmost importance that such an appellate officer hearing appeals from the Boards, whose judgment shall be final, must be a judicial officer of 10 years' experience. I may be told that Government will perhaps appoint such an officer. Sir, I do not want that to be left to the Government rule, but to be laid down in the Act itself that nobody but a judicial officer has to be appointed. Further, I may be told that we have not got enough of such officers, but when the Act comes into force a great deal of civil judicial work will be gone because all those cases of about Rs. 20 to Rs. 500, which would formerly have gone to Civil Courts, will now come to the Boards; so the work of civil judicial officers will be very much less, and I refuse to believe that Government cannot find judicial officers of that experience to be appellate officers. I would appeal to Government not to insist

on their mighty strength, but to come to reason. I think the reason is all on our side and not on the side of Government. The question is of utmost importance that the appellate officer must be a judicial officer, and we cannot at all leave the matter to the discretion of Government. Government may go right, Government often go wrong. So we would rather have it laid down in the Act itself.

Babu JATINDRA NATH BASU: I beg to support the amendment moved by Mr. S. M. Bose. In considering this amendment it should be ascertained as to whether the proposal is likely to clog the operation of this Act. So far as arbitration in the preliminary stage is concerned, this amendment leaves that untouched, and the arbitration may be proceeded with by the Board appointed by Government. This amendment concerns itself only with the appellate officer. It is likely that there will be a very small number of appeals as happens already in cases of appeals elsewhere. What Mr. Bose desires to ensure is that where the question that has been decided by the Arbitration Board is important enough to be taken to an appellate authority, the appellate authority should, by training and experience, be such as would command the confidence both of the debtor and the creditor. Mr. Bose merely desires to lay down that the appellate officer should be a person of not less than 10 years' experience as a judicial officer administering civil justice. He has pointed out that it will not be difficult to obtain judicial officers to exercise this appellate power because by reason of the establishment of these Boards, a large amount of civil work which now goes to the ordinary judicial officers will be taken off their hands, and if these are so taken off, they will be free to exercise the appellate power with which this measure seeks to invest these officers. As Mr. Bose has pointed out, there may be important questions which may so affect the interests of the parties that they may feel it necessary to go up to an appellate officer. Therefore, the appellate officer should have some amount of experience in the trial of this kind of claims and also competence to deal with questions of law which are likely to be placed before him. I support the amendment.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to support this amendment for an additional reason. We have a right to expect that in a matter like this Government will appoint judicial officers to preside over the Board as they have done in the Central Provinces. In the Central Provinces, we find, in Shohagpur *tahsil*, that a Sub-Judge has been appointed to preside over such a Board. So appeals going from judicial officers should certainly be heard by officers of some judicial experience. Another additional reason is that

lawyers are not excluded from the appellate stage. Unless an appellate officer be a judicial officer of some experience, he will not be able to deal with intricate questions of law which may arise as in cases of mortgage, priority, etc. It is only reason and common-sense that there should be a qualification of appellate officers laid down in the law itself so that on those points there will not be any mistake. I think it is the intention of Government to have a judicial officer as the appellate officer, otherwise it is apprehended that such an officer will not be able to decide these intricate legal questions on appeal. There should be a standard of qualification laid down clearly and experience is the best guide in matters like this. Cases should not only be decided but decided to the satisfaction of all parties. It is incumbent on the officer to see that justice is done. The argument in favour of this amendment is a very sensible one, and I hope Government will see its way to accept it.

The Hon'ble Khwaja Sir NAZIMUDDIN: It is one of those cases where Government fully realise that as far as possible judicial officers should be appointed as appellate officers, but in view of the fact that we have got so little knowledge of what it is going to be like, the number of officers that we may have to appoint and the cost that it will involve Government do not think that it is advisable to have their hands tied. They would like to have the choice of officers, responsible and competent officers, left to them, so that they can make sure that the right type of man is appointed. It is possible that a certain type of officers who have got some kind of judicial experience such as those who are serving as subdivisional officers and others, may be more easily accessible as appellate officers than judicial officers of 10 years' experience. But I am sure the House ought to rely on Government to see that in an important question like this they will appoint officers who will be competent to deal with these questions, and I do not think there is any reason for apprehension that suitable officers will not be appointed for hearing appeals.

Mr. S. M. Bose's motion being then put, a division was taken with the following result:—

AYES.

Bal, Rai Bahadur Sarat Chandra.
Banerji, Mr. P.
Basu, Babu Jatindra Nath.
Bose, Mr. S. M.
Chaudhuri, Dr. Jogendra Chandra.
Chaudhuri, Babu Kishori Mohan.
Dutt, Rai Bahadur Dr. Haridhan.
Ghose, Dr. Amulya Ratan.
Hakim, Maulvi Abdul.
Haque, Kazi Emdadul.
Maiti, Mr. S.
Mitra, Babu Sarat Chandra.
Mukhopadhyaya, Rai Sahib Sarat Chandra.
[illegible]

Nag, Babu Suk Lal.
Poddar, Mr. Ananda Mohan.
Rahman, Maulvi Azizur.
Ray, Babu Khetter Mohan.
Ray Chowdhury, Babu Satish Chandra.
Rout, Babu Nanda.
Roy, Mr. Sailesvar Singh.
Roy, Mr. Surat Kumar.
Roy Choudhuri, Babu Nem Chandra.
Sen, Rai Bahadur Akshoy Kumar.
Sen Gupta, Dr. Naresh Chandra.
Singh, Srijut Taj Bahadur.
Sinha, Raja Bahadur Bhupendra Narayan, of [illegible]

NOES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Armstrong, Mr. W. L.
Baksh, Maulvi Syed Majid.
Bal, Babu Lalit Kumar.
Bannerjee, Babu Jitendralal.
Barma, Babu Premhari.
Basu, Mr. S.
Chanda, Mr. Apurva Kumar.
Chaudhuri, Khan Bahadur Maulvi Hafizur Rahman.
Chowdhury, Maulvi Abdul Rhani.
Chowdhury, Haji Badi Ahmed.
Cohen, Mr. D. J.
Cooper, Mr. C. G.
Das, Babu Guruprasad.
Dunlop, Mr. R. W. B.
Eusufji, Maulvi Nur Rahman Khan.
Faroqui, the Hon'ble Nawab K. B. M., of Ratanpur.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Graham, Mr. H.
Haldar, Mr. S. K.
Haque, the Hon'ble Khan Bahadur M. Azizul.
Hogg, Mr. G. P.
Hosain, Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Maulvi Abi Abdulla.
Khan, Mr. Razaur Rahman.
Khan, Maulvi Tamizuddin.
Lamb, Mr. T.
Martin, Mr. O. M.
Mitter, Mr. S. C.
Mitter, the Hon'ble Sir Brojendra Lal.
Momin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaja Sris Chandra, of Kasimbazar.
Nazimuddin, the Hon'ble Khwaja Sir.
Porter, Mr. A. E.
Quasem, Maulvi Abul.
Raheem, Mr. A.
Rahman, Khan Bahadur A. F. M. Abdur-.
Ray, Babu Amulyadhan.
Ray, Babu Nagendra Narayan.
Reid, the Hon'ble Mr. R. N.
Roxburgh, T. J. Y.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Sachse, Mr. F. A.
Shah, Maulvi Abdul Hamid.
Singha, Babu Kshetra Nath.
Steven, Mr. J. W. R.
Stevens, Mr. H. S. E.
Tarafder, Maulvi Rajib Uddin.
Thompson, Mr. W. H.
Townsend, Mr. H. P. V.
Woodhead, the Hon'ble Sir John.
Wordsworth, Mr. W. C.

The Ayes being 27 and Noes 56, the motion was lost.

The Hon'ble Khwaja Sir NAZIMUDDIN: I beg to move that in clause 2(5), lines 2 and 3, for the words "a Collector authorised or an officer appointed," the words "an officer or the Collector authorised" be substituted.

It is a purely verbal amendment, Sir, and I need not make a speech on it.

The amendment was put and agreed to.

Babu KHETTER MOHAN RAY: I beg to move that after clause 2(8)(ai) the following be inserted, viz.—

"(i) any debt incurred for the purposes of trade;

(ii) any amount due as arrear of wages."

Sir, in the original Bill these two items were excluded, but the Bill as it has emerged from the Select Committee includes in its purview the debts contracted for purposes of trade. Sir, in East Bengal the movement of jute from the growers to the trade centres, such as Narayanganj, Serajganj and other places is effected by *beparies* and *farias*, who are themselves agriculturists. They are allowed an advance, that is, *dadan*, by the *aratdars* for the purchase of jute in

villages. These *beparies* and *farias* also carry on business in jute and sell their merchandise to European and Marwari firms through *aratdars*. If debts contracted for the purpose of trade comes within the purview of the Bill, jute and other trades will be adversely affected, for many of these agriculturists are shopkeepers, storekeepers, and they derive their stock from wholesale traders on credit, and if they are not excluded, not only will it undermine rural credit, but will also adversely affect the trade of the country. This aspect of the question seems to have been entirely overlooked by the Select Committee. So I only seek to restore these two clauses 2(8)(*i*) and 2(8)(*ii*), that is to say, any amount of debt incurred for the purpose of trade or any amount due as arrears of wages. Those who keep servants they try to pay them regularly, so there is no need for giving them the protection of a Board of Debt Conciliation for scaling down the arrears of wages. With these words I move my motion.

Mr. P. BANERJI: I support the motion. I fail to understand why this has been omitted from the report of the Select Committee. Mr. Ray has just pointed out that it will disorganise the whole credit system in the country, if this is omitted. The Hon'ble Member wants that it should be only the agriculturists who will have protection, but it would seem that persons other than agriculturists who have borrowed money will not pay. As has been pointed out, in jute centres there is already sufficient money in the hands of agriculturists and if this opportunity is given to them the result will be that they will refuse to pay, and the effect of the Bill will be that they will naturally be tempted to become dishonest and the propaganda for which the Hon'ble Member wants to take so much credit will be robbed of all its effect, and in fact, in a way, the position of the poor agriculturists for whom, if I may say so, the Hon'ble Member is shedding crocodile tears, will be followed in the long run by absolute chaos as I pointed out the other day, and he might again stand up and defend himself by saying that there is wisdom among the majority in the Council. Now, Sir, similar motions have also been tabled by many members of this House. Of course, I do not know whether the Hon'ble Member will accept them. I wish to make another point about "any amount due" as arrears of wages. I have an identical motion like Mr. Ray's and I would like to hear what the Hon'ble Member has got to say particularly on that point. He has also omitted the fact of an agriculturist making any contract "for any share of the produce of land payable on account of land revenue under the system known as *adhi*, *barga* or *bhag*." If they are entitled to do this in cases where they have taken agricultural labourers and keep them in suspense and not pay them regularly, what will happen? Sometimes it happens in the countryside that the agriculturists keep such labourers in suspense and pay them off after the harvest. In that case also protection should be given, but you have

not given them that protection. Such agriculturists are not landowners; they also are agriculturists pure and simple. So why should not protection be given to them. These provisions were in the original Bill, but I fail to understand why in the Select Committee this very important point was omitted. With these words, Sir, I support the motion.

Mr. J. W. R. STEVEN: May I speak on this motion or shall I move my own motion?

Mr. PRESIDENT: Probably the motion before the House will serve your purpose equally well, or you may, if you like, move your own motion.

Mr. J. W. R. STEVEN: I beg to move that after clause 2(*8*)(*ai*) the following be inserted, namely:—

"(*t*) any debt incurred for the purpose of trade."

Sir, I was surprised when I listened to the speech of the Hon'ble Member two days ago when he stated that in the Select Committee no substantial change was made in the Bill. Surely, Sir, if the Bill went to Select Committee as a purely Agriculturist Debtors' Bill and comes back to include trade debts, it is a most substantial change in the substance of the Bill. I would like to point out to the members of this House that the system prevailing—and which prevailed for over 50 years—is that large sums of money are daily advanced to *aratdars*, *beparies* and *farias* by jute merchants and these same middlemen in their turn implement advances until through a chain this money is advanced to the *raiyat*. If the Bill as it stands is to be allowed to include trade debts, then it will have serious consequences as all these advances which are made to middlemen and cultivators will surely be stopped or modified to such an extent as to cause more inconvenience to the *raiyat* than he is likely to benefit by the other provisions of the Bill. I would, therefore, ask the Hon'ble Member in charge to seriously consider whether he should not allow the reinsertion of the clause I have proposed. With these few words I commend my amendment to the members of the House.

Mr. W. L. ARMSTRONG: I beg to move that after clause 2(*8*)(*ai*) the following be inserted, namely—

"(*t*) any amount due on account of an advance of wages."

Mr. President, Sir, the Hon'ble Member in charge of the Bill has pointed out that the scope of the Bill is confined to agricultural debtors only. While regarding agriculture as the basic industry of the province, it should be taken into account that many members of agricultural families are employed in other industries and they thereby supplement their earnings. By the fact that they depart to their homes at

certain times of the year to attend to their crops, it might be argued that their primary means of livelihood is agriculture, their homesteads being in agricultural areas.

About 50,000 people in the province are employed in mining, and I want it to be clear that anyone to whom advances on account of wages are made, will rest sensible of his obligation to discharge, in the form of work, his liability in full for such prepayments or repay in cash any balance due from him. It is possible, when the Act comes into operation, that such liability may be included in his agricultural debts, with rent as a first charge. Should such be the case, it will tend to discourage advances to workmen in industries but who are agriculturists primarily.

In the recruitment of tea labour, the advances are considerable, and I think you will agree that the payments being in cash for work to be done, without the burden of interest, there should be no confusion on the point that the labourer is liable to discharge such debts as apart from any other obligations that may arise or exist.

The Hon'ble Member has stressed the point that the purpose of the Bill is to enable the cultivators to have their debts reduced and payable over certain periods, but then I submit that reduction should not apply to advances made to workers on account of wages.

Dr. NARESH CHANDRA SEN GUPTA: Sir, I shall try to remove some misapprehensions with regard to this amendment. What is the idea, for instance, in excluding the arrears of wages from the operations of this Bill? It means that the wages which an agriculturist may owe to his labourers will not be recoverable practically, because the poor labourers to whom the wages are due would hardly be able to bring a suit. If the wages are included within the scope of this Bill, it would be reasonable to ask that they must be given an opportunity of recovering them by way of preferential treatment. And I hope that when we come to deal with priority of claims, wages due by an agricultural debtor will be considered to have priority over other debts. On the other hand, if we accept this amendment, we will be depriving the poor labourers of their wages. While the rest of the creditors will go into the hands of the Board, the poor labourers will not be able to recover their dues.

Then, there is the question of debts incurred for the purpose of trade. Mr. Steven has gone so far as to say that the inclusion of this within the Bill altogether changes the character of the Bill, and he practically denounces the Hon'ble Member in charge for saying that the character of the Bill has not been changed. But the definition here in clause 2(*8*) is not the whole of the law, as this only defines what are debts; but if you look further down you will see that a "debtor" means a debtor whose primary means of livelihood is agriculture. No person who is making, say, a thousand rupees a month

by acting as a *bepari* and has got only half a bigha or so of land from which he gets only one hundred rupees would come within the scope of this Bill. He would not come under the definition of a debtor under clause 9. Then what are the debts which are included in this Bill? An agriculturist means a person whose primary means of livelihood is agriculture. What are the trade debts referred to here? The agriculturists have sometimes to supplement their income by subsidiary occupation, and it means in most cases a certain amount of trade. Very small debts are due on account of such trades. Suppose you leave out trade debts, the effect of it will be to tie up the hands of other creditors while the trade creditor goes and sells him up. If you leave out trade debts, then an adjustment of debts by the Board is at once reduced to a farce. The trade creditor would at once sell him out, while the Board was solemnly considering the question of adjustment of other debts. So, as I have said, the whole thing will be reduced to a farce. The only person who would benefit by the Bill would be the debtor whose primary means of livelihood is agriculture. The question of priority might also arise. I can understand that certain classes of debts should have priority. For instance, when an agriculturist who is also a labourer takes an advance of wages, well, all that advance should not be put off till eternity. When the matter is before the Board, the Board should give priority to the advance, so far as the income of that labourer from the wages is concerned. When you give an advance of wages, you expect that the man will work for a certain period within which he should be able to repay the advance taken by him. You do not expect to recover it from his property, but you expect to recover it from his wages as they fall due. It is quite possible that when the matter comes before the Board, the Board will allow reasonable priority without causing any inconvenience to the general body of creditors. But that does not mean that the debt should be excluded. The order or the manner in which it should be paid may be regulated. What does it mean if you exclude some classes of debts? You mean that the total debts of the debtor cannot be adjusted, and practically there cannot be any adjustment whatever. You will not befriend the agriculturist who happens to be owing a small trade debt. Therefore, I submit that the question of differential treatment for any special kind of debt does not arise. All kinds of debts of an agriculturist must go to the Board.

Mr. ANANDA MOHAN PODDAR: Sir, I rise in support of Mr. J. W. R. Steven's amendment.

In the original Bill debt incurred for the purpose of trade was not included within the purview of the Bill. But this debt also has been included by the Select Committee. I am unable to support this inclusion. In rural areas, the cultivators take to shopkeeping as a subsidiary source of income, sometimes they work as *beparies* and other

class of middlemen's work. They mostly take their goods on credit from big and wholesale dealers. In jute centres, both Indian and European firms advance large sums by way of advance or *dadan* to *beparies* who are mostly cultivators; and a very big amount is lying unrealised from these *beparies*. If this class of debt is included within the purview of this Act, the traders will be put to great difficulty and, generally speaking, the interests of trade and commerce will be greatly dislocated. For those reasons debt incurred for the purpose of trade should be excluded.

The Hon'ble Khawaja Sir NAZIMUDDIN: Sir, I think that after the explanation given by Dr. Naresh Chandra Sen Gupta there is very little left to be said. I would repeat what he has said as regards trade debts.

Sir, I also come from a jute district and I know the type of people to whom these jute firms advance money. I am sure Mr. Steven will agree with me that practically everyone engaged in this transaction earns no less than Rs. 1,000 or their minimum earnings amount to Rs. 700 to Rs. 800. It must be shown that these people earn more than that out of agriculture and also that their primary means of livelihood is agriculture—they have got to prove that—in order to entitle them to come within the purview of the Bill. Practically every man who Mr. Steven thinks is likely to be affected by this provision will not get advantage of this Act, because their primary means of livelihood is not agriculture but business and trade. The real safeguard is the clause containing the definition of the debtor and as long as that definition is not tampered with, there should not be any apprehension in the minds of anyone that any person but a genuine agriculturist will come in. Therefore, I hope Mr. Steven will not press his amendment. All those men who are engaged in trade—these jute men—are businessmen and traders and though they earn some subsidiary income from agriculture their chief means of livelihood is the work of *bepari*. Therefore, that being so, they will never come in under this Act.

Then, Sir, it is not possible to improve on the explanation given by Dr. Sen Gupta as regards wages. Once you leave out wages from the purview of this Act, you debar these men from getting any redress whatsoever unless they go to the Civil Court. You cannot even conceive of day labourers going to the Civil Court for selling up a cultivator. Therefore, in the interests of day labourers, we have put an amendment defining wages. Therefore, as a practical proposition there can be no question about the reduction of money advanced as wages. These reductions will only take place where a man has taken money and the original sum has accumulated on account of the high percentage of interest and the person who has borrowed finds himself in great difficulty and is unable to pay. In his case the question of payment does not come in, because he goes to work and pays off by his work.

There cannot be any question of deduction of advance wages. If anyone would care to study the actual type of cases that has been decided in Chandpur, he will find that although there has been a 40 per cent. reduction of debt, in no case was it anything like below the original principal. In no case in Chandpur has the case been below the original principal. I doubt very much; there may be some cases, exceptional cases, but very few. If that has been done, where it has been done, the man has actually paid more than the original capital, and the amount has been reduced by that. Therefore, I hope the movers of these motions will kindly withdraw them.

Babu Khetter Mohan Ray's motion being put, a division was taken with the following result:—

AYES.

Armstrong, Mr. W. L.
Banerji, Mr. P.
Basu, Babu Jatindra Nath.
Bose, Mr. S. M.
Chaudhuri, Dr. Jogendra Chandra.
Chaudhuri, Babu Kishori Mohan.
Cooper, Mr. C. G.
Dunlop, Mr. R. W. B.
Lamb, Mr. T.
Mittra, Babu Sarat Chandra.
Poddar, Mr. Ananda Mohan.
Ray, Babu Khetter Mohan.
Raut, Babu Hossni.
Ray, Mr. Sarat Kumar.
Sen, Rai Bahadur Akshoy Kumar.
Steven, Mr. J. W. R.
Tarafder, Maulvi Rajib Uddin.
Thompson, Mr. W. H.
Wordsworth, Mr. W. C.

NOES.

Afzal, Rawabzada Khwaja Muhammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Baksh, Maulvi Syed Majid.
Bal, Babu Lalit Kumar.
Bal, Rai Bahadur Sarat Chandra.
Bannerjee, Babu Jitendralal.
Barma, Babu Premhari.
Basu, Mr. S.
Chanda, Mr. Apurva Kumar.
Chaudhuri, Khan Bahadur Maulvi Hadzur Rahman.
Chowdhury, Maulvi Abdul Bhani.
Chowdhury, Haji Badi Ahmed.
Cohen, Mr. D. J.
Das, Babu Guruprosad.
Eusufji, Maulvi Nur Rahman Khan.
Faroqui, the Hon'ble Nawab K. B. M., of Ratanpur.
Gilchrist, Mr. B. R.
Gladding, Mr. D.
Graham, Mr. H.
Hakim, Maulvi Abdul.
Haldar, Mr. S. K.
Haque, the Hon'ble Khan Bahadur M. Azizul.
Hogg, Mr. G. P.
Hoque, Kazi Emdadul.
Hossain, Nawab Musharrul, Khan Bahadur.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Maulvi Abi Abdulla.
Khan, Mr. Rasoor Rahman.
Khan, Maulvi Tamizuddin.
Martin, Mr. O. M.
Mitter, Mr. S. C.
Mitter, the Hon'ble Sir Brajendra Lal.
Mumin, Khan Bahadur Muhammad Abdul.
Mukhopadhya, Rai Sahib Sarat Chandra.
Nag, Babu Sah Lal.
Nazimuddin, the Hon'ble Khwaja Sir.
Porter, Mr. A. E.
Quasem, Maulvi Abul.
Rahman, Khan Bahadur A. F. M. Abdur.
Rahman, Maulvi Azizur.
Ray, Babu Amulyadhan.
Ray, Babu Nagendra Narayan.
Reid, the Hon'ble Mr. R. N.
Roxburgh, Mr. T. J. Y.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Roy Choudhuri, Babu Hem Chandra.
Sachse, Mr. F. A.
Sahana, Rai Bahadur Satya Kinkar.
Sen Gupta, Dr. Naresh Chandra.
Shah, Maulvi Abdul Hamid.
Singh, Srijut Taj Bahadur.
Singha, Babu Kshetra Nath.
Stevens, Mr. H. S. E.
Townend, Mr. H. P. V.
Woodhead, the Hon'ble Sir John.

The Ayes being 19 and the Noes 56, the motion was lost.

Mr. Steven's amendment was put and lost.

Mr. W. L. Armstrong's amendment was put and lost.

Maulvi RAJIB UDDIN TARAFDAR: I beg to move that clause 2(*8*) (*iii*) be omitted.

Maulvi Rajib Uddin Tarafder spoke in Bengali, of which the following is a translation in English:—

Sir, I request the members of this Council to think thoroughly about the huge amount of rent throughout Bengal. To make the indebtedness of the debtors easier rent should be included into debt. You may think that the rent of the peasants amounts very little. The *zemindars* realise much more than what you may think. I saw that the rent of occupancy tenants in Bengal in some places of Rangpore and Rajshahi districts is Rs. 10 or 12 and in some cases up to Rs. 15 or more. If any tenant possesses 12 bighas of land, he will have to pay at least Rs. 120 net rent. You may be surprised to hear that the tenants have to pay at least 162 kinds of *abwabs* with their rents at Tahari, Faram Chhapai, Nazarana, Chekerdam, Kali Britti, Iswarbritti, Gadisalami, Khutagari, Gazette Zama, Parabi, Gram Kharacha, Hati Parata, Motor Parata, etc. If I speak about the rent alone, the amount of rent is not less than the other debts. So I think that the rent should be included in debt by the members of this Council and the Government and thus amend the Bengal Relief of Indebtedness Bill, 1935.

Mr. SARAT KUMAR ROY: Sir, I rise to oppose this motion. It seeks to include landlords' dues for both current and future rents, within the category of debts under this Act. If this motion be carried, the result will be that landlords will be hampered in realising their current dues from their agriculturist debtors, and they shall have to receive them by such small instalments as may be awarded by the Board.

Sir, it is inconceivable that if they are so placed, it would be possible for the landlords to pay land revenue with punctuality. That, Sir, would surely affect public revenues. But it is an admitted principle underlying this Bill that it should not contain anything which is likely to hamper the punctual realisation of public demands, whether directly or indirectly. So I think the Bill should contain express provisions for the purpose. It would, therefore, have been wise enough to exclude totally the realisation of rents from the purview of this Act. But as arrears of rent have been included with the category of debts as defined here, and we the landlords agree to sacrifice our interest to that extent for the good of the tenants, I submit that things should not go further. I, therefore, oppose this motion.

The Hon'ble Khwaja Sir NAZIMUDDIN: To begin with even if this amendment is accepted, I have been advised by Government's legal advisers that current rent cannot be treated as debt. Therefore, the question may arise why Government are not accepting this. The difficulty is if we leave it like that and do not make it absolutely clear, there may be some misapprehension in the minds of the tenants who may refuse to pay, thinking simply that they have made an application and as they have included in their debts the current rent, probably they are not required to pay it until the award is made. Therefore, from the point of view of the mover of this amendment, he practically gets no relief even if this amendment is accepted, but on principle I do not think there is any justification for the current rent being included. After all, you must remember that this Bill is an emergency measure, and I think as far as that point is concerned everyone in this House is unanimous that this should be treated as an emergency measure. Even Mr. Tamizuddin when speaking on this question said that he was prepared to limit the filing of application to 5 years for payment of the award. If you accept this Bill as an emergency measure, then there is no justification or reason for including the current rent. Therefore, in view of what I have said, I hope Mr. Tarafder will withdraw his motion. The arrear rent is included and by including arrear rent you are going to give a great relief to the poor cultivators because they will be able to pay their arrears in 3 or 4 years and they will not be called upon to make any extra payment for arrear rent which they pay now—about 25 per cent. —and therefore the current rent should be paid simultaneously. If the current rent is not paid, the whole thing will go.

Maulvi RAJIB UDDIN TARAFDER: I beg to withdraw my motion.

The amendment was, then, by leave of the Council withdrawn.

Mr. SARAT KUMAR ROY: I beg to move that in clause 2(*8*)(*iii*), in lines 1 and 2, for the words "a Board determines the amount of debts under section 18," the words "an application is made for settlement of debts under this Act" be substituted.

Sir, after an application is made under section 9 or 9A of the Act for settlement of debt, notices have to be served upon creditors and other persons concerned, and it may not be possible to determine the debts under section 18 before a long time passes since the date of the application. If rent which falls due in the intervals be included within the term "debt," complexity as to accounts will arise. On the other hand, landlords will, for all practical purposes, lose the advantage provided for them for realisation of current dues, while in

the meantime they shall have to go on paying the land revenue punctually without being able to realize rents from their tenants.

For these reasons, I think that the proper course is to fix the time up to which the arrears of rent are to be calculated for determination of debts under section 18 on the date of making applications under section 9 or 9A of the Act. Hence I move my motion.

Mr. H. P. V. TOWNEND: This question was considered rather carefully by the Select Committee where it was pointed out that the landlords would not suffer in any way if all arrears of rent due at the time of the award were included in it. How many landlords file rent suits as soon as the money becomes due? They almost always wait and file suits after 3 years' rent is in arrears, just before any is time-barred. The position will be that a man is not able to pay his debts and has difficulty about paying his rent: if the award goes through, he will be able to pay part of his debt and he will also be able to pay his rent. The award gives him some encouragement and some hope and he will pay voluntarily more than could be realised otherwise. So far as the landlord is concerned, it only means that there will be some delay: the arrear rent will be paid in two or three instalments. The intention is that, subject to a few things like labourer's wages and advances, the rent should be paid first. Experience in the Central Provinces is very much to the point. There it is reported. (as I heard from Mr. Darling when he had been inspecting these Boards) that in almost every case arrears of rent were paid up before any award was made. The Board put pressure on debtors to pay their rent and the only occasion when the arrear rent was not paid before the award was when the man could not manage it: and then it was paid under the award before other debts. We hope that the same thing will happen in Bengal. What is the good of starting this award system by leaving outside the award a debt for one year's rent which is known to have become due? There is no sense in imposing on the landlord an obligation to bring a suit three years later for that year's rent along with the rents for two more years when within the three years probably he can get all arrears of rent paid without bringing a suit, merely by leaving it to the Board to pass orders about the whole thing. So the Select Committee thought that it would be simpler and more to the interest of the debtor and the landlord if the wording in the Bill is adopted.

I oppose the motion.

Dr. NARESH CHANDRA SEN GUPTA: It is not very material whether the words stand as they are, or this amendment is accepted or in other words whether the date of the determination of the amount of

debt remains the limit of the debt or the date [illegible] application is made such limit. But whatever view is taken, the whole thing should be consistent. I find a little difficulty in the drafting of the Bill as it stands, for instance, clause 18 says that "if there is any doubt or dispute" as to the existence or the amount of any debt, the Boards shall decide whether the debt exists and determine its amount. But there may be cases in which there is no doubt; what would be the result in that case if the present wording of this clause remains? Apart from that, section 18 refers to dispute as to the existence of any debt, that is to say, a debt included in the application made under clause 9; that follows from the sequence of the sections debts which were not due on that date could not be included under clause 9. Therefore, if this definition is retained as it is, we will have to make some consequential changes in the subsequent section; on the contrary, you might just as well adopt the date of application as the ultimate limit up to which rent is adjusted in which case the only change necessary would be the amendment now proposed. There is no difference in principle.

The amendment was then put and lost.

Mr. SARAT KUMAR ROY: I beg to move that in clause 2(8), (*va*) be omitted.

Sir, it must be admitted that under the existing laws of the land, banks such as are referred to in this sub-clause, do not enjoy any special privilege over the other secured creditors, unless these banks themselves rank as secured creditors. The present measure is not primarily intended to nullify the provision of existing laws which define contractual rights. Its object should be confined within the limits of conciliation of debts between the debtors and their creditors. It should aim only at giving relief to the agriculturist debtors. It ought not to provide for relief to any particular section of the creditors, to the detriment of the interest of other sections. I, therefore, find no reason why the banks should be excluded from the purview of this Act, while all other secured creditors are brought within its purview. That would be nullifying the provisions of the existing laws regarding mortgages, etc. I do not think that such a course is at all justifiable. So I propose that these banks should not be excluded from the purview of this Act. I, therefore, move my motion.

The Hon'ble Khwaja Sir NAZIMUDDIN: My reply is very brief. All those banks which are scheduled practically none of them lend to the cultivators. Therefore, the question is simple; it does not really do any harm to anybody. I, therefore, hope that the hon'ble member will reconsider his opinion and withdraw the motion.

Mr. SARAT KUMAR ROY: I beg leave of the House to withdraw my motion.

The amendment was then, by leave of the Council, withdrawn.

Mr. PRESIDENT: Order, order. The Council stands adjourned till 2 p.m. to-morrow, the 29th November, 1935.

Adjournment.

The Council was then adjourned till 2 p.m. on Friday, the 29th November, 1935, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Friday, the 29th November, 1935, at 2 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHOWDHURY, of Santosh) in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers and 85 nominated and elected members.

GOVERNMENT BUSINESS

LEGISLATIVE BUSINESS

GOVERNMENT BILLS.

The Bengal Agricultural Debtors Bill, 1935.

(Discussion on the Bengal Agricultural Debtors Bill, 1935, was resumed.)

Mr. PRESIDENT: We rose last evening when we had finished Item No. 75. Now we have to deal with certain identical amendments. These are Nos. 77, 78 and 79. I think I should call upon the Hon'ble Member in charge of the Bill to move the one which stands against his name.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I beg to move that in clause 2(*8*)(*ra*), line 2, for the figures "1935," the figures "1934" be substituted.

The amendment was put and agreed to.

Babu SATISH CHANDRA RAY CHOWDHURY: Sir, I beg to move that in clause 2(*9*), in lines 1 and 2, for the words "'debtor' means a debtor whose primary means of livelihood is agriculture and who" the following be substituted, namely:—

"'Debtor' means a person who owes a debt and whose means of livelihood is partly agriculture and who."

Sir, I understand that the purpose of the Bill is that all those who had some security to offer should be brought under the scope of this

Bill. That being the limitation under which we have got to work, I think the meaning here given to the word "debtor" would create a considerable difficulty to the Board to come to a correct decision. There would be some difference of opinion in the Board as to the meaning of the word "primary means of livelihood is agriculture" in cases where there are some inmates of a family who are engaged in pursuits other than agriculture. Sir, the main object of the Bill is to give the benefit of it to all those who live partly on the produce of the soil provided they can furnish securities on which the creditors can rely. I think if these words are modified so as to include persons who have got agriculture as part of their means of livelihood instead of being their sole or primary means of livelihood, the benefit will go to a larger class of persons. This will be giving benefit to a wider circle of deserving men without causing any harm to anybody and without creating any difficulty. I should like to make it clear, Sir, that while I am not against any particular class of persons reaping the benefits of this measure, I am in favour of extending its operation to as wide a circle as possible. In this connection, I cannot refrain from referring to the Punjab Act on which the present Bill is based. In that Act, not only the tenants and *raiyats* included, but also such land-owners as can come under the purview of the Act. But here we are confining the operation practically to agriculturists, and I only want that families, whose occupation is partly agriculture and partly cottage industrial pursuits and other avocations in life, should not be debarred from coming under the scope of this Bill. Only to save them from the caprices and whims of the Board concerned, I have brought this amendment to make the position clear to them——

Mr. PRESIDENT: In the interest of good debate and also to save time, I think it would be better if we take up all the amendments from 89 to 102 and have one discussion on them. They all relate to the same matter and refer to the definition of a debtor. Babu Satish Chandra Ray Chowdhury might move all his amendments at this stage and make one speech on them.

Babu SATISH CHANDRA RAY CHOWDHURY: In moving these amendments, my intention is——

Mr. PRESIDENT: Why not first move your amendments and then make your speech?

Babu SATISH CHANDRA RAY CHOWDHURY: Sir, I beg to move (*a*) that in clause 2 (*9*), in lines 1 and 2, for the words " 'debtor' means a debtor whose primary means of livelihood is agriculture and who" the words " 'Debtor' means a person who owes a debt and who" substituted.

I beg also to move (*b*) that in clause 2(9), in line 2, for the word "agriculture" the words "agricultural income" be substituted.

I beg also to move (*c*) that in clause 2(9)(*a*) the words "tenure-holder or proprietor of land or" be added.

I beg also to move (*d*) that in clause 2(9)(*a*) the words "tenure-holder or proprietor or homestead tenant or" be added.

Sir, in all these amendments, the Hon'ble Member will find that my intention is not to include any class other than the agriculturist. My intention is that they must be agriculturists or that their income must be derived partly from agriculture and partly from elsewhere. If my amendment No. (*b*) is accepted, it will be seen that that includes all persons who rely on agricultural income, and persons who rely on agricultural income should come under the scope of the Bill in one shape or another. Instead of narrowing down the circle unduly, my intention is to include all persons who have got agricultural income, and in that case all grades of tenants and even the land-owners should be given the benefit of this Bill, as has been the case with the Punjab Act. When the Select Committee amended the clause, there was some such idea also in the mind of the Committee, but that could not fully find a place in the report, probably on account of the freezing atmosphere of Darjeeling. The amendment of the Select Committee in clause 3(9)(*b*), viz., "cultivates land himself or by members of his family or by hired labourers or by *adhiars*, *bargadars* or *bhagdars*," goes to show that they were not at all particular that the Bill should be confined only to those agriculturists who cultivate their own lands with their own hands or with their own people. By that insertion, the intention is to include those big *raiyats* who might, in some cases, be bigger and better people than small estate-owners. It includes even *jotedars* who never till their own lands, but who let out their lands to *bargadars*, *adhiars* and *bhagdars*. This shows that what was uppermost in the mind of the Select Committee was the question of security, and not the class of persons who should be benefited. Provided the security was there and the matter concerned agriculture, there was no harm in making the circle as wide as possible. If I was right in reading the mind of the Select Committee—of course, that is always a very difficult task,—the object really was that the relief should not go beyond those who depended on agriculture, provided the creditors might rest content with their securities. If I am right in my statement, and if I am correct in saying that the Hon'ble Member has sympathy for all classes of debtors who are connected with agriculture, I hope the Hon'ble Member will see his way to accept all the amendments moved by me. That would only enable the benefit to be shared by a larger body without in any way injuring other classes and persons, and the effect will be that the measure will be welcomed by a larger body than at present.

So far as my amendments (*c*) and (*d*) are concerned, I would particularly draw the attention of the Hon'ble Member to the Punjab Act which includes land-owners also. Let there be no prejudice against land-owners, against tenure-holders who are really small estate-owners and are friends of cultivators in the midst of whom they live. These men are considered by the cultivators as their friends, philosophers and guides who are always available to them. Let there be an atmosphere of friendliness, and let there be a common law for all, and I am sure it will bring tranquillity in the land. If you can do that, everybody will bless the Hon'ble Member and this House. With that end in view, I commend my motions to the acceptance of the House.

Babu PREMHARI BARMA: Sir, I beg to move that in clause 2(*9*), in line 1, for the word "primary" the words "one of the" be substituted.

By this amendment, Sir, I want to make more comprehensive the definition of "debtor." If the term "primary" is retained, many of the middle-class men will be excluded. Almost all the middle-class men of Bengal are partly or wholly connected with agriculture. One or two members of a family may not be directly connected with agriculture, but their dependents are in almost all cases connected with agriculture. In many cases, for maintenance and other family necessities, such as marriage or *sradh* ceremony of some of their dependants who are primarily agriculturists, one might have to incur debts, but such a person will not get any benefit under the Act though his debts were incurred for the benefit of agriculturists. It will not be at all just and fair if such a man is to be deprived of the relief intended to be given by this piece of legislation simply on the ground that by mere chance or accident he happens to secure a service or to take to some other profession or business.

Sir, in the second place, I want to change the word "primary" for the reason that in almost all cases, the question will be raised whether the applicant is primarily dependent on agriculture or not, and whether the income from agricultural sources is larger or smaller, and if in the opinion of the Board, the income from agricultural sources is smaller than that from other sources, the Board may not give him any relief under the Act, though the applicant may be an agriculturist. With a view to avoid these difficulties, I propose my amendment, and I commend my motion for the acceptance of the House.

Kazi EMDADUL HOQUE: Sir, I beg to move that in clause 2(*9*), line 2, after the words "livelihood is" the words "wholly or partly" be inserted.

I beg further to move that in clause 2(*9*)(*a*) after the words "under-*raiyat*" the words "or receiving rent from a *raiyat* or under-*raiyat*" be inserted.

Sir, I at once start by asking who are the persons who are going to be benefited when this Bill will become an Act. If we turn our attention to the title of the Bill, we find that it is the agricultural debtors in Bengal who are going to be benefited, although within the four corners of the Bill we do not find the mention of the words "agricultural debtors." We have the definition of "agriculture" and we have also the definition of "debtor," but nowhere there is any definition of the words "agricultural debtor." Turning to this clause 2(9), we find that the term "debtor" has been used in the sense of "agricultural debtor." If we read between the lines of the clause, we find that according to the description given, an agricultural debtor must be one who will not only live upon agriculture but must at the same time be a *raiyat* or under-*raiyat* or one who cultivates the land himself or by members of his family or by hired labourers or by *adhiars*, *bargadars* or *bhagdars*. Again, the words *raiyat* and under-*raiyat* have the same meaning as they have in the Bengal Tenancy Act, so the *raiyats* and under-*raiyats* within the meaning of the Tenancy Act will have to prove that they live mainly upon agriculture in order that they may be admitted to the privileges of this Act. In the definition of "*raiyat*" in the Bengal Tenancy Act, we find that the *raiyat* is a person who primarily holds lands for the purpose of agriculture. There the word "primarily" has been used in the sense of "originally" and has reference to the original motive although in many cases that motive has not been actually carried into effect. Sir, it is, therefore, very difficult to determine whether a man is actually a *raiyat* or not. It will further have to be seen whether a substantial portion of a man's holding is under cultivation in order to prove that he is actually a *raiyat* with the requisite qualification. In order to enjoy the benefit of this Bill, a *raiyat*-debtor will have to prove amongst others that on the date of the application he is a *raiyat*. Many things may happen to a man since he was originally settled as a *raiyat*. Subsequently under stress of circumstances a large portion or even the whole of his land might have passed away. It might be that he had contracted a debt when he was really a *raiyat*, but subsequently he lost his rights, and in that case he will not be in a position to receive any boon from the Board. Such contingencies are not at all rare. Now what is true of *raiyats* is also true of under-*raiyats* and we find before our very eyes *bona fide raiyats* and under-*raiyats* reduced to the position of serfs—day labourers. There are nine hundred cases out of a thousand which will come under that category. If a scrutiny is made in this connection, and if the provision in the Bill as to the definition of "debtor" is strictly adhered to, then most of the *raiyats* and under-*raiyats* will go out of these categories. So, if it is really the intention of the Bill to help persons who are in real need of relief, the case of such persons as I have mentioned just now should be taken into consideration. So long as there is agriculture as the one primary means of livelihood in the definition of debtor the

definition cannot be allowed to stand as it is for in that case its benefit cannot be taken advantage of by those who need it. I therefore suggest that these two amendments should be accepted by Government in order to give relief to people who are really entitled to get relief; otherwise a large number of agriculturists would be left out of consideration and the benefit will not reach the persons who are to be protected.

Babu KHETTER MOHAN RAY: Sir, I beg to move that clause 2(9)(*a*) be omitted.

As a result of the insertion of this clause by the Select Committee a large class of agriculturists has been excluded from the benefit of it. The original Bill says that the debtor means those whose primary means of livelihood is agriculture irrespective of the status which he enjoyed with respect to land. Now a differentiation is made, a man in order to get benefit under this Bill must be a *raiyat* within the meaning of the Bengal Tenancy Act but there are agriculturists who have got better rights I mean *mirasdars*, *mukararidars*, *nishkadars*, etc., whose holdings comprise of 10 or 12 acres. These are small holdings virtually but they are not *talukdars*, they are not *mukararidars* as we understand them but virtually they are *raiyats* and still they have been excluded and deprived of this benefit simply because their status is a little better. The difference between a *raiyat* and *mukararidar* and *nishkadar* is that the rent of the former is subject to enhancement while that of the latter is fixed and he is not liable to ejectment as the *raiyat* is under certain circumstances Simply because there is this difference in respect of their holdings—they are agriculturists and their number is not insignificant—they have been deprived of the benefit of this Act by the insertion of this clause in the Bill but the definition as it was in the original Bill comprised all the agriculturists. This Bill is going to give relief to the agriculturists and to people who cultivate land with their own hands—they do not let it to others—but excluded others who are also agriculturists because they have got higher status. I hope the Hon'ble Member will reconsider the amendment and will accept it because it is very wholesome, otherwise a large class of agriculturists would be deprived of the benefit which they are going to extend to the agriculturists.

Mr. W. H. THOMPSON: I beg to move that in clause 2(9)(*a*) for the word "or" at the end the word "and" be substituted. But I am much more anxious at the same time to oppose the various amendments proposed by Mr. Satish Chandra Ray Chowdhury and others. The Bill has been introduced for the purpose of dealing with the difficulties of the agricultural classes who cannot meet their debts. The task is stupendous enough. The Hon'ble Member has not been able to give us any idea how long it will take, how many Boards he will

have to appoint, how many applications will be received and how long it will take to get to dispose of them. The task is admittedly enormous, the primary object is to help the agriculturists and to bring in all sorts of other people besides the cultivator would make the task longer and much more difficult. Moreover, there will always be the danger of the cultivator—least vocal of all the people concerned—being pushed into the background. Small tenure-holders and people like that will get to the Boards first and the primary object of this Bill will be shelved to some extent in favour of people for whom it is not primarily intended for these people will be the first to take advantage of it. The amendment that I propose would limit it entirely to the people that we want to protect, *i.e.*, people who are both *raiyats* and cultivators. I anticipate that Government will raise objections to my suggestion because it will say that there are in some places, particularly in the districts of the eastern side of the Meghna, a large number of people who were little but ordinary cultivators but who have been recorded in the settlement as tenure-holders. In the district of Noakhali and in the south-east corner of Tippera there are wide areas covering whole villages or almost whole thanas where during the last 70 or 80 years cultivators, who were *raiyats* originally, have paid *salaami* to their landlords and in exchange obtained the titles of *patnidar, howladar, shikmidar* and so on. They claim to be tenure-holders and nothing would have pursuaded them to be content to be recorded as anything but in the record-of-rights. But all they had done was to pay money for an advance in their status and I maintain that they did not lose their original *raiyati* status when they became tenure-holders. The case is not by any means parallel with the case covered by section 22 of the Bengal Tenancy Act where there is a merger. There is no merger here. In the Settlement record for Noakhali district great care was taken to distinguish tenancies of this nature from others. I think the expression which was used to describe their status was "*prathamajaye madhyaswatya*." The expression was intended to distinguish those people who are tenure-holders by local custom from ordinary middlemen. So, Sir, against every one of those promoted cultivators there is a distinguishing record of his status, distinguishing him from ordinary tenure-holder. The official report of the Settlement explains why this was done and what it means and it would be easy for the Government to issue instructions to the Boards to admit such persons as debtors under this Act and there would be no difficulty if the section were left as I propose to leave it. There would be no difficulty in these people being included so that their debts might be settled with those of ordinary *raiyat*. Sir, I submit my amendment to the House.

Khan Bahadur MUHAMMAD ABDUL MOMIN: All these amendments beginning from Mr. Satish Chandra Ray Chowdhury's down to Mr. Thompson's are due to a misconception of the scope of the Bill.

On the one hand, the movers of these amendments want to widen the scope of the Bill by including in the definition of debtors those who are not primarily agriculturists but middlemen and others who are not cultivators at all. On the other hand, Mr. Thompson wants to narrow the scope of the Bill by limiting it only to such *raiyats* and under-*raiyats* who cultivate the land themselves. I will begin by criticising Mr. Thompson first. If his amendment is accepted what will be the result. The very people for whom Mr. Thompson is very anxious will be automatically excluded from the operations of this Bill. Under his amendment to bring a debtor under the operation of the Bill two qualifications are necessary: firstly, that he must be a *raiyat* or under-*raiyat* and that he must also be cultivating the land himself or by hired labour. The small tenure-holders, *howladars* and others of whom there are many in Noakhali and to whom Mr. Thompson refers, cultivate their lands themselves and are not in any way bigger men than the *raiyats* themselves. If the word "or" is substituted by "and" the effect will be that those small people who cultivate their lands themselves but who are not *raiyats* under the Bengal Tenancy Act will be excluded altogether from the operation of the Bill. According to the Bill they now come under clause (*b*) as they cultivate the land themselves or by hired labour and although they are tenure-holders they are not excluded from the operation of this Act These small tenure-holders I will say the so-called tenure-holders—often deserve more protection than many of the bigger *raiyats* whose circumstances may be much better Therefore this amendment cannot be accepted

The other amendments as regards the inclusion of tenure-holders and landlords who do not cultivate the land themselves, much though I would prefer to have them included and succoured, there are obvious difficulties As has been stated by Mr. Thompson the task would be stupendous when the Act is extended to *raiyats* and under-*raiyats* only. Government will find it impossible to include tenure-holders within the scope of the Bill. A further objection will be that the whole Bill was conceived with the intention of helping the agriculturists only. Therefore it will not be feasible to include others who cannot by any stretch of imagination be considered as agriculturists. A third objection will be that this is primarily a Bill which is going to give protection to one class of people against another class and the scope of this Bill must be restricted only to such people who need protection most. On these grounds perhaps Government will oppose the amendments which purport to widen the scope of the Bill by including tenure-holders and others who do not cultivate the land themselves. If it were possible, however, to include some of these people and to widen the scope of the Act we would welcome it but I think as it is more or less an experimental measure we ought to see how it works before we widen its scope and we ought to be content with what Government has brought in. I therefore oppose all these motions.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Sir, I congratulate the Government for introducing this Bill which in the beginning was vehemently opposed but in the end or in the middle of the discussion it is found that opposition also wants to enjoy some of its beneficial provisions. That shows that the object of the Bill is really praiseworthy, and if it is widened a little bit and its application is extended to certain other people with a minimum of income, I think it will not do much harm, either to Government or to the people. With this idea I rise to support the motion of my friend Mr. Ray Chowdhury. When we are constituting a Board for the composition of the debts of the people and when we know, as a matter of fact, that the debts are not only the debts of pure agriculturists but the debts of mixed persons, persons who may have other sources of income as well, I think it is possible for Government to consider this matter here. I am sorry, Sir, the Hon'ble Member in charge is conversing with another member, so it will not be possible for him to understand our point of view, so I shall stop for sometime.

(After a few seconds.)

Mr. PRESIDENT: You need not stop and lose your possession of the House. (Laughter.)

Nawab MUSHARRUF HOSAIN, Khan Bahadur: The question is that if the thing is a good thing and Government and we ourselves believe that it is a good thing, why don't you extend it a little for the protection of the people whom my friends the oppositionists want to protect? Why should Government be miserly and say "No, we won't extend our protection to such class of people?" I cannot conceive that the Board cannot dispose of all the cases arising in a particular locality within a limited time. I do not believe that an enormous number of cases will actually come up before the Board so that it will make their work so heavy that they would not be able to dispose of all the cases that are presented before them. On the other hand, if the scope is kept limited, I think that those who are wanting protection will misunderstand the motive of Government and think that Government is against the middle-class people. But, Sir, Government should not be against the middle-class people. These people, as we know, are getting all sorts of assistance from Government, and one of the first duties of the Government is to find out whether it is possible for them to make it possible for the middle-class men to have more income from different sources and to improve their condition. So far as I know, Government have been trying during the last few years to ameliorate the condition of the middle-class men. It should not, therefore, be their intention to take away the protection from them and to restrict it to a particular class of people. If the Government wants to be a popular Government,

they should think of the opinions that are expressed by the representatives of the people in this House. A very important section of the people after vehemently opposing the introduction of this Bill wants help from you. I hope it will be in the interest of Government itself to support this modest claim that has been preferred by the representatives of the middle-classes. They want some protection. Why do you deny them this? So, I appeal to Government to seriously consider this point of view and to suggest an amendment—if I were personally to propose one, it might be no good—by which the people that are now seeking protection from Government may get it. It will then be a very good thing for all concerned, and I hope my appeal will not go in vain and will not be misunderstood by anybody here. I have been trying my level best to obtain help through this legislature for all classes of people. When I stood up the other day in favour of the *zemindars* and the people under the Court of Wards, then also I spoke exactly in the same strain. Similarly, when the agriculturists want some protection, I say: Give them protection by all means. Now, when the representatives of the middle-class rise from their seats and want protection, I think it will be a gross neglect on the part of Government to deny them this request. With these few words, Sir, I support the motion of Mr. Ray Chowdhury and I would appeal to the Hon'ble Member in charge to see if by simply taking off the word "primary" and using the word "partly" instead and by further limiting it by saying that the income of the man who could come for the composition must not exceed, say, a thousand rupees, then a lot of people of the latter class may receive this help. And it is for the Government and the Hon'ble Member to decide upon this suggestion. I think this addition will make the Bill extremely popular, and so it should be accepted.

Mr. F. A. SACHSE: Except Mr. Thompson's, all the amendments moved this afternoon have one and the same object. They want to extend the scope of the Bill to all people who are dependent upon agriculture for their living, even if they themselves have never handled the plough. It is very surprising to find that these amendments should have been moved by some of the bitterest opponents of the Bill, who say that the Bill will not work and that it will ruin rural credit, and that these same opponents make a grievance of the fact that it does not apply to creditors and debtors equally. On the other hand, Mr. Thompson and Mr. S. K. Roy want the Bill to be confined to *pucca* cultivators who plough their own land. To achieve this end they propose to substitute the word "and" for the word "or" at the end of clause 9 (*a*). Now, that change will not achieve the object for which it has been suggested. We know as a positive fact that the Midnapore Zemindary Company, for example, has been recorded as an occupancy *raiyat* in accordance with successive decisions of civil courts over large areas of land in Nadia and Midnapore. Therefore, it seems impossible to define in the Act exactly who is to benfit. The only way of achieving

the object of Mr. Thompson or Mr. S. K. Roy is to allow Government and its supervising officers to make it clear in the rules and to see that the Boards do not abuse its powers. The Board of Economic Inquiry, after long discussions, decided to omit all references to the definitions of *raiyats* and tenure-holders in the Tenancy Act. The Select Committee decided to put them in. The additions do not help very much because sub-clauses (*a*) and (*b*), as they now stand in the Bill, cover, practically, everybody—all rent-receivers. There are quite a number of *zemindars* or proprietors of estates who cultivate some of their own land by hired labourers or *bargadars*, and nearly all tenure-holders have some land so cultivated. Therefore, if the Select Committee draft stands, in deciding what debtors are to be dealt with, the Boards will have to depend in every case on their own interpretation of the words "whose primary means of livelihood is agriculture." The remaining clauses won't help them at all.

On the other hand, if Mr. Sarat Kumar Roy's amendment is accepted, only people who are *raiyats* and under-*raiyats* under the Tenancy Act can get the benefit of the Bill. Persons recorded as tenure-holders cannot get the benefit even if they cultivate all their share of the tenure with their own hands. I looked up the Mymensingh Settlement Report the other day and found that there was over a lakh of rent-free tenure-holders in that district alone. Most of them have areas so small that they must cultivate them themselves. They could not live on the rent of those lands. Similarly, there are *talukdars* in the eastern parts of Mymensingh and the owners of revenue paying and revenue-free estates in Chittagong whose share is so small that, although their status is that of *zemindars*, they are really cultivating *raiyats*. If, therefore, we restrict the debtors of the Act to *raiyats* and under-*raiyats*, in the legal sense, we should be cutting out many people who deserve to come under the Bill as much as any cultivating *raiyat*. We are, also, forcing the Board to go into the difficult question of status. We all know that the sections dealing with status in the Tenancy Act are not perfect, and there have been any amount of civil suits regarding the question whether a particular man is a *raiyat* or a tenure-holder. The definitions in the Tenancy Act, as interpreted in the Courts, are too rigid, we do not want to make this Act too rigid. If, therefore, the House does not want to accept Mr. Sarat Kumar Roy's amendment, the safest compromise is to leave the Bill exactly as it stands and to depend upon the words "primary source of livelihood." The only amendment, that would really serve the purpose of the people who want this Act to be as elastic as possible and to cover as many people as possible, is that of Kazi Emdadul Hoque, substituting the words wholly or partly for primary. On the whole, far and away the best thing would be to leave the provision as drafted by the Select Committee.

Babu Satish Chandra Ray Chowdhury's amendment was then put and lost.

The following amendments were then put and lost:—

Babu SATISH CHANDRA RAY CHOWDHURY—that in clause 2 (*9*), in lines 1 and 2, for the words "'debtor' means a debtor whose primary means of livelihood is agriculture and who" the words "'Debtor' means a person who owes a debt and who" be substituted.

Babu PREMHARI BARMA—that in clause 2 (*9*), in line 1, for the word "primary" the words "one of the" be substituted.

Kazi EMDADUL HOQUE—that in clause 2 (*9*), line 2, after the words "livelihood is" the words "wholly or partly" be inserted.

Babu SATISH CHANDRA RAY CHOWDHURY—that in clause 2 (*9*), in line 2, for the word "agriculture" the words "agricultural income" be substituted.

The following motion was, by leave of the Council, withdrawn:—

Babu KHETTER MOHAN RAY—that clause 2 (*9*) (*a*) be omitted.

The following motions were then put and lost:—

Babu SATISH CHANDRA RAY CHOWDHURY—that in clause 2 (*9*) (*a*) the words "tenure-holder or proprietor of land or" be added.

Babu SATISH CHANDRA RAY CHOWDHURY—that in clause 2 (*9*) (*a*) the words "tenure-holder or proprietor or homestead tenant or" be added

Kazi EMDADUL HOQUE—that in clause 2 (*9*) (*a*) after the words "under-*raiyat*" the words "or receiving rent from a *raiyat* or under-*raiyat*" be inserted.

Mr. W. H. THOMPSON—that in clause 2 (*9*) (*a*) for the word "or" at the end the word "and" be substituted.

Mr. P. BANERJI: Sir, I beg to move that in clause 2 (*10*), in lines 2 and 3, the words "and includes any transaction which is, in the opinion of a Board, in substance a loan" be omitted.

Sir, my motion is a very simple one, because I notice that the inclusion of these two sentences is redundant. The first sentence of this subsection runs: "'loan' means a loan whether of money or in kind" and

I think it is quite sufficient. It is not necessary, therefore, to add the next sentence because this addition will make it more ambiguous, as it will be rather against the policy of Government to put it at the discretion of the Board, for it has been said that the Board will consist of different persons and will be constituted differently at different centres. Nowhere in the Bill it has been suggested that anything will be kept vague for the Board to decide. Therefore I suggest that these two sentences should be omitted. With these words I commend my motion to the acceptance of the House.

Mr. SARAT KUMAR ROY: Sir, I rise to support the motion. I do not think it proper to widen the connotation of the term "Loan" to such an extent as to cover by it any and every possible transaction which people may have with cultivating *raiyats*. That, I am afraid, may paralise at least a certain portion of the internal trade in the province. It is common experience that traders make advances of money to the growers of agricultural product, in order that they may get such goods at a price agreed upon between them. When the grower of such produce makes default in delivering the goods, the earnest money advanced becomes a loan. It would indeed operate as hardship, nay it might operate as injustice to the trader if he cannot get back the earnest money in one lump sum but has to wait for years for it, while he at the same time suffers loss through failure on the part of his supplier in timely delivering the goods sold. If those advances are reckoned as "Loans" under this Act, I think sacredness of ideas as to contracts for sale will be altogether lost and trade will suffer.

So, Sir, I suggest that the definition of the term "Loan" be narrowed down and that the same be limited only to those transactions which are entered into on the express understanding that the loan whether in cash or in kind is being paid for the purpose of securing interest thereon, whether the same be repayable in cash or in kind. Sir, while I am willing to concede that loans both in cash as well as in kind may very well come under the purview of this Act, I cannot lend my support to the idea of including every other possible monetary transactions within the category of the term "Loan."

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, the difficulty is that there are various kinds of transactions which may in substance be a loan or a transaction purely for the purpose of a loan, but on the surface may not appear as a loan. Mr. Sarat Kumar Roy has given us only an instance of a transaction of that kind; whereas there are others which in substance may be a sale but actually a loan. Therefore the power is reserved for the Board to consider whether it is a loan or not; and if the Board makes a wrong decision, there is an appeal to the appellate officer. So I do not think that the type of transaction mentioned by Mr. Sarat Kumar Roy will be treated by the Board as a loan, because

it is not a loan really. Therefore I do not think there is any reason to apprehend and even if a Board makes a mistake and declares the transaction as a loan, the aggrieved person can appeal to the appellate officer and have the decision reversed; but if we take away the power from the Board, then in that case we tie the hands of the Board, because there may be really hard cases which could have been considered by the Board as a loan, but owing to this definition being changed they cannot be treated as a loan. Therefore I would request the mover not to press the motion, because the right of appeal as well as the fact that there is a Board will be a sufficient safeguard against the type of transactions mentioned by Mr. Sarat Kumar Roy.

Babu HEM CHANDRA ROY CHOUDHURI: I rise to oppose this amendment, not on the grounds advanced by the Hon'ble Member, but from a different point of view. My point of view is that all creditors must come under the purview of the Act. If some creditors be kept outside the purview of this Act, the other creditors run the risk of losing their dues. Take for instance, A owes some four or five debts to four or five creditors, and if one of the creditors be left out and loans of the other creditors are adjusted, the effect will be that the creditors left out will go to the civil court and have all the properties of the debtors sold to get his dues satisfied, and in that case the award will be infructuous and the creditors whose loans have been included within the award will get nothing. If thought necessary it may be so provided that some of them will have priority in payment, but all the debt will have to be included. If some debts are left, it will not harm the debtor so much as it will harm the other creditors as I have already said. So I oppose this.

The amendment was put and lost.

The Hon'ble Khwaja Sir NAZIMUDDIN: I beg to move that after clause 2 (*12*) the following be inserted, namely:—

"(*12a*) 'Secured debt' means a debt which is secured by a mortgage, charge or lien on the property of the debtor or any part thereof and includes any arrears of rent due to a landlord, and 'unsecured debt' means any other debt."

This is a consequential amendment due to the provision of this word in another clause.

The Hon'ble Khwaja Sir NAZIMUDDIN: I beg to move that clause 2 (*15*) be omitted. I have made a mistake, I would like to have this postponed.

Mr. PRESIDENT: But you have already moved it.

The Hon'ble Khwaja Sir NAZIMUDDIN: We are considering the matter at present.

Mr. PRESIDENT: As we should like to follow the correct constitutional procedure you should ask the leave of the House to withdraw it and if a consequential amendment is found necessary you might ask my permission to move it.

The Hon'ble Khwaja Sir NAZIMUDDIN: I ask the leave of the House to withdraw it.

The amendment was, by leave of the House, withdrawn for the present.

Maulvi ABUL QUASEM: On a point of order, Sir. This amendment No. 111 which you have asked me to move, is dependent on No. 188, which will come up later on. With your permission I will reserve the right to move this amendment after that amendment is moved. It might stand over till then

Mr. PRESIDENT: But clause 2 shall have to be put

Maulvi ABUL QUASEM: I ask leave that this might stand over for the present. My arguments in support of my motion will be more conveniently made at that time.

Mr. PRESIDENT: I understand that. But my point is that clause 2 shall have to be disposed of before amendment No 188 is reached.

Maulvi ABUL QUASEM: I then beg to move that after clause 2 (*16*), the following be added, namely:

"(*17*) The expressions 'principal debtor' and 'surety' have the same meanings as in the Indian Contract Act, 1872."

I have tabled an amendment, being amendment No. 188, to clause 9A (*1*) (*b*) and there I want that a surety, who has helped a principal debtor, who comes under the definition of debtor as laid down in this Bill, should be given relief along with the principal debtor. But as the words "principal debtor" and "surety" have not been defined in clause 2 and as, if my motion No. 188 is acceptable to the House, then these phrases would require to be defined, I have sought to include the definition of these terms in the amendment I have just now moved.

The meaning I want to attach to the two phrases "principal debtor" and "surety" is the same as that given to them in the Indian Contract Act of 1872. I hope Government will see their way to accept this amendment, and I will not take it that Government will commit themselves to the acceptance of amendment No. 188.

Mr. H. P. V. TOWNEND: I think it would be more expeditious if the hon'ble mover would withdraw this amendment now; then if the amendment to which he refers, No. 118, is carried, we can at the end of the whole proceedings ask your permission to inlcude it as a consequential amendment. This is the procedure that was adopted in the Municipal Act.

Mr. PRESIDENT: He never mentioned that his intention was to move a consequential amendment after No. 118 was disposed of, if need be.

The amendment was by leave of the Council withdrawn.

The question that clause 2 as amended, stand part of the Bill was put and agreed to.

Clause 3.

Rai Bahadur AKSHOY KUMAR SEN: I beg to move that after clause 3 (*1*) the following proviso be added, namely:—

"Provided that such Boards shall be situated in district towns and at the subdivisions."

My point is that such constituted Boards, if allowed to sit in places other than subdivisions and district headquarter towns, that will be establishing courts of unlimited pecuniary jurisdiction, because these Boards will be able to deal with suits of any value whatsoever if the debtor be an agricultural debtor under the provisions of this Bill. While trying these suits there is possibility of taking recourse to it with the help of the police and other executive officers, because we know that no lawyers' help and lawyers—I shall come to that later on, there is another motion on that—lawyers' assistance will be necessary. I submit that these courts with such unlimited pecuniary jurisdiction should not be allowed to sit in mufassal villages except at district headquarters town and these courts should sit under the very eye of the high executive officers such as Subdivisional Officers and District Magistrates. In the experimental stage especially things will have to be done, and such courts should not be allowed to be situated elsewhere. Moreover, although lawyers will not be allowed to appear as under the provisions of this Bill, as it now stands, the debtors must have to go to lawyers to have necessary instructions how to file applications, how to proceed under the provisions of this Act, and what will be the procedure to be adopted in suits and cases to be tried by these courts. And so for instruction and for legal assistance for the applicants and litigants they must have to go to lawyers, and lawyers will be available in district headquarters, towns and subdivisions. In this view I commend my motion to the acceptance of the House.

Khan Bahadur MUHAMMAD ABDUL MOMIN: I strongly oppose this motion. According to the Bill full discretion is given to the Government to place these Boards wherever they like, but in the interests of the people for whose benefit this measure is being enacted, it will be desirable, as far as possible, to have these Boards as far away from district and subdivisional headquarters, and for the very reason which the mover of this amendment has given. The Bill forbids lawyers to appear before these Boards, and with very good reason. Now, my friend wants that these Boards should be brought near headquarters to make it possible for the lawyers to advise it may not be openly but otherwise secretly. The whole idea of this Bill is that the disposal of all these cases should be summary and in accordance with equity and fairness not so much in accordance with law. Therefore for the convenience of the agriculturists these Boards should be as near their homes as possible and certainly as far away from headquarters stations as possible. Of course Government have discretion in this matter but we do not want them to use this discretion in the manner suggested.

Mr. ANANDA MOHAN PODDAR: If these Boards are established in district and subdivisional towns they will in my opinion be convenient both to the creditor and the debtor. As has been pointed out by Khan Bahadur M. A. Momin I may say that in these days of easy communication it will not be difficult for the parties to approach the Boards in towns. Now-a-days we very often find villagers coming to towns even for petty civil or criminal litigation and for purchasing other necessities of life. So if the Boards are established in towns it will prevent the parties falling into the hands of village touts and there will be little chance of false and concocted evidence being given. The members of the Boards will also be free from the influence of village party faction and this is the fundamental reason why I want to see the Boards established in towns rather than in rural areas. Those who are acquainted with the social condition of rural Bengal are quite aware how the people in the villages are divided and how the social atmosphere there is influenced by party factions, and I hope if these Boards are established in villages it will be difficult to avoid the influence of party factions there and in fact there will invariably be miscarriage of justice at least in 75 per cent. of the cases. For this reason I think the Boards should be established in towns. Moreover, qualified men are available in towns more than in the villages and the Board will be able to secure proper legal opinion and guidance in cases where intricate questions of law are involved. As has been pointed out by Khan Bahadur M. A. Momin we are going to exclude the legal practitioners from these Boards. I am sorry we have not come to that stage and we do not know yet whether the legal practitioner will come

within the purview of this Bill and whether they will be allowed to appear before these Boards or not.

Another thing that strikes me is that it will not be practicable for Government to establish all the Boards in villages. In the very beginning I think it will be in the fairness of things that these Boards should be established first of all in towns and when it is found that they have worked satisfactorily they may be extended to the villages at a later stage. I support the motion of Rai Bahadur Akshoy Kumar Sen.

Maulvi RAJIB UDDIN TARAFDER spoke in Bengali, the following being an English translation:—

Mr. President, Sir, I strongly protest against motion No. 113. Because if the Debt Conciliation Boards be established in the district and subdivisional towns, the aim and object of this Bill will be null and void. The illiterate and poor peasants and debtors will have to spend much to come to the town from different parts of the district to settle their debts. Moreover, they will not get any legal help, as the Bill as proposed does not allow it. What benefit the debtors will derive by coming to the town? The clever *mahajans* will take every advantage over the illiterate debtors who may not be acquainted with the customs of the town. I think the Debt Conciliation Boards should be located in the village, if not it should be situated at the headquarters of the thana at least. I hope the members of this Council will not give their consent to this proposal.

The Hon'ble Khwaja Sir NAZIMUDDIN: I am afraid the whole conception of this Bill is against the spirit of this amendment. What we want are village Boards where the debtor and creditor will be contronted before each other and we want an atmosphere of *panchayati* rather than that of the court. If we have these Boards in the subdivisional towns and district headquarters they will smack of the civil courts and it will be extremely difficult to get at the true facts because the idea is that in the villages everybody knows the affairs of the people, who have borrowed, what transactions have taken place and when you place a man before his fellow villager it is very difficult for him to come and tell a deliberate lie. So the village is the place where a man will put up a true statement of facts and as regards the *mahajan*, the creditor, the people will know what he has lent and how he has lent and the people of the village also know how the transaction was got through and what is the real fact behind it. If we try to take away all the safeguards these cases will have to be tried as civil cases and there are inherent difficulties in having these cases tried in a manner in which

civil suits are tried. Therefore the idea is that these Boards should be located in the villages and in towns where the people reside. I very much regret that it is not possible for Government to accept this amendment and I hope the Rai Bahadur will withdraw it for I am sure he did not mean it seriously.

Rai Bahadur AKSHOY KUMAR SEN: I beg leave to withdraw my motion.

The amendment was then by leave of the Council withdrawn.

Babu SATISH CHANDRA RAY CHOWDHURY: Sir, I beg to move that in clause 3 (2), in line 1, after the word "Chairman", the words "who shall be a judicial officer having at least ten years' experience as Judge of a Civil Court" be inserted.

The withdrawal of the last motion and the reply of the Hon'ble Member to it strengthens my hand in moving this particular amendment although I know I may yet fail to carry conviction home to the Hon'ble Member. If you have these Boards away from towns and subdivisional headquarters in the villages and if that is the policy of the Bill in that case we ought to safeguard the position of the creditors and debtors by providing at least that the presiding officer of the Board should be a man of law. I pointed out the other day that even Bihar, which cannot claim to be more advanced than Bengal,—Bengal has now fallen on evil times and is made to feel every day that Bengal is practically a non-regulated province where it is to be ruled everywhere, even in the courts, by executive officers (we got it from the other Hon'ble Member that even the Appellate officers' Boards are likely to be presided over by executive officers), Bengal which was the most advanced province in the matter of education has fallen so far back in official estimate, that it cannot provide men with experience in law and men with experience of administering civil justice to preside over important Boards and tribunals,—is dispensing civil justice. It is well known that we have not got what may be called the limit of the claim which will be decided by the Board. Thousands of rupees may be the subject matter of a case, and in matters of mortgage, etc., intricate questions of law may come up and this the Hon'ble Member in charge of the Bill cannot deny.

Mr. PRESIDENT: May I ask you to move your other motion (No. 118) and make one speech on both. It will save the time of the House.

Babu SATISH CHANDRA RAY CHOWDHURY: Very well, Sir. I move that in clause 3 (2), in line 1, after the word "Chairman", the words "with experience of administration of Civil Law" be inserted. In many cases very intricate questions which may affect not only the creditor but the debtor as well may come up; so it is necessary that these

cases should be tried according to law, justice and commonsense. Where are you going to find that knowledge if you do not provide for a presiding officer at least with judicial experience? There is no reason why it cannot be provided for inasmuch as here in Bengal we have a large number of retired judicial officers who would be willing to lend their services. I am sure that as an effect of this legislation most of the civil courts will have either to shut their doors or will have very little to do because we all know that in the mufassal courts the majority of cases are cases relating to money and mortgage, the number of title suits will not be even 10 per cent. of those suits. That being so many of these judicial officers will have no work. They will probably attend office, say, at one o'clock, and after a good sleep after midday meal and read newspapers in court for a couple of hours and then return home for their well earned rest. The civil courts will be there not for administering civil justice but for simply proclaiming the majesty of the law. That being the state of things it is quite possible that we shall get a very large number of judicial officers released from their work and there is no reason why an assurance cannot be conveyed to the people by providing that the presiding officer will be a man with judicial experience. Then, Sir, I have heard it said by the mover of the last motion that there are village factions, and all that. Well Sir, it is not a reflection on the villages to say that there are factions there; in fact factions there are everywhere, probably in every clime. But Government when they are giving such wide powers to the Boards ought to see that the fountain of justice is not polluted by village factions and all that. It may be that very competent persons to form members of the Boards may not be available as they might have to be recruited from the locality itself. But Government does not give any guarantee nor can it give any guarantee that the members of the Boards will not be recruited from that locality and consequently tainted with the atmosphere that might be prevailing there. It is therefore all the more incumbent for Government to see to it that the presiding officers be not liable to any influence either way and that they should at least be men with a knowledge of the law and its administration particularly when it is the policy of the Bill to shut out lawyers and to keep them at arm's length. That is why I say that it is all the more obligatory that the men who will dispense justice from that Board should be men with a knowledge of the law. In this connection I may submit that now-a-days we find to our very great regret that there is always visible a feeling of nervousness in the treasury benches whenever anything of law or lawyers is mentioned and it is still more annoying when we find that Government who do not shrink from recruiting their Ministers and Members from the legal profession—for even in the present Government the lawyers form the majority of the cabinet—should pay such scant courtesy to them and that the lawyer members of the Government as soon as they are translated to that happy position, should begin to

look askance at the practising lawyers and seem to think that they are of no use except as mischief-mongers and this and that. That is a mentality which has always perplexed this side of the House very much. If you do not want to rule by law, or that as a matter of fact nobody should be a lawyer or that nobody should be a good citizen, then it is a different thing, but if you at all want the study of law to be prosecuted or that there should be lawyers you should not be so indifferent to or jealous of them. All statute begins with lawyers and you want lawyers for the work of interpreting the law, because we know that law as is made by the legislature is full of defects and ambiguities. Therefore it is all the more necessary that such laws as are made by such lawyers should be interpreted by lawyers of equal ability at least. But to shut out lawyers from a sphere where they are pre-eminently necessary is a picture neither ennobling nor edifying and it is hardly proper for the Government of Bengal that whenever anything is mentioned about law and lawyers nervousness should be exhibited by them. Whatever may be said, Sir, against the lawyers, and however much lawyers may be maligned, the fact is and it will ever remain a fact, that so long as civilized government continues and so long as there is rule of law and commonsense they will remain; these lawyers will be sought after by Government, by the public and in fact by everybody who has any stake in the country and who has got to protect his life and privileges. It may be dispensed with in the non-regulation provinces, or in the frontier provinces; they may be given the go-by there but not in a province still regulated by law and order. Then, Sir, how is it that the very simple and sensible motion of my friend Mr. S. M. Bose about the (Chairman) being a man with legal experience, was opposed and we were told in reply "No, the administration of the Boards should be carried on by means of executive officers, namely, subdivisional officers? If such statements are made outside the Council it will create endless laughter. We know what Subdivisional Officers are; they are surely very good executive officers but in many cases when we appear before them in connection with any case involving points of law, many of us have this sad experience that they do not know even the rudiments of law and we have got to explain to them the a b c and x y z, as it were, of the law; their lamentable lack of legal knowledge makes them feel that they are like fish out of water when dealing with us. Even this House is not very poor in the possession of lawyer members and this House was told the other day that Subdivisional Officers would be quite competent for the work! I should rather think that police officers would be better, for sub-inspectors and even constables have got a better knowledge of the rural conditions than your Subdivisional Officers and that is what you want. So I do not think that any sensible man or any civilized government will at all tolerate the astounding statement that for the administration of justice we do not require judges or men with legal knowledge and that it can

well be conducted by men who are absolutely ignorant of law! Is this then the British rule of law of which we have heard of so much and which we even covet so much, and which has been so very assiduously proclaimed by you? If that is the Government's respect for law it is useless for me to say anything more on it.

We heard with wonder one of our Hon'ble Members who, though not a lawyer yet is very well versed in law having received his training in my district at the hands of a very able lawyer, speaking so glibly against lawyers meddling in the affairs of these Boards. It does not matter, but to maintain respect for law and yet to shut out lawyers from helping in the administration of justice is a paradoxical proposition which will excite laughter in any learned circle.

I believe as a matter of fact that you want—whatever may be your opinion about law and lawyers—the people to benefit by this Bill; for you cannot forget that when matters will come up before the Boards there will be keen contest between the debtors and creditors. Creditors being generally wealthy men will somehow get legal advice from headquarters and will try to manipulate evidence and witnesses in such a way that the poor debtors will not at all be able to fight against the unscrupulous creditors. Unless the president of the Board is a man with legal knowledge who will safeguard their interests: Who will see that justice is done to the weaker party? So if there is sincerity and *bona fide* intention on the part of Government which moved them to bring in this measure to do good to the debtors you should agree to our proposal; let there be this summary procedure, and let them be tried in the villages but if you cannot have as members of the Boards men versed in law or who know some law, you should at least appoint as presidents of the Boards men who have legal knowledge and experience.

But, Sir, it is very hard to carry conviction when people are determined not to be convinced but if reason and commonsense are to prevail even in this Council there is no reason why it should not be accepted. As I said the other day, I may repeat again, that even in Bihar and Orissa they have appointed judges as their presiding officers, and has Bengal gone so far down that there must be law courts in Bengal where the administration of justice would be placed in the hands of the executive, for is that not the picture which the Government of Bengal here present by the provisions contained in this Bill?

Mr. PRESIDENT: I have decided to have one discussion on the amendments relating to the "Chairman" and his qualifications and I think the Hon'ble Member would find it convenient to make one reply in answer to all the arguments that might be advanced. It means that I shall take up all the amendments up to No. 124 and then skip over some and take up amendments Nos. 135 to 140, inasmuch as they all relate to the same thing.

Kishori Babu, will you please move your amendments Nos. 119 and 125 now and make one speech on them?

Babu KISHORI MOHAN CHAUDHURI: All right, Sir. Perhaps, I may also move amendment No. 126 also.

Mr. PRESIDENT: No, 126 is different, as it relates to members of the Board; so let us leave it out for the present.

Babu KISHORI MOHAN CHAUDHURI: Sir, I beg to move that in clause 3 (2), in line 1, after the word "Chairman", the words "shall not be below the rank of a munsif of proved ability of at least eight years' judicial experience" be inserted.

I fully agree with the previous speaker that the presiding officer must be a man of judicial experience. Whatever may be the case in Eastern Bengal, at least in Northern Bengal there are few people of the rank of retired subordinate judges or munsifs in the mufassal. The general tendency, besides, is nowadays, that after retirement judicial officers go to town for the education of their children and other purposes. Many people who can afford to come to Calcutta build their houses and settle permanently in Calcutta. So, in the mufassal there are not many men who can be entrusted with this work. Moreover my idea is that their work should not be a labour of love for the presiding officer shall have to devote some time and attention to consider very many things; for example, he will have to examine witnesses and go through the papers of both the parties. These are things which will take time. Then, again, those who have settled in towns or in Calcutta may not be very willing to go to the mufassal and live there for some time just to do these things. That is why I suggest that the presiding officer must be a paid man, and there is no reason why he should not be paid. As Mr. Ray Chowdhury has suggested, the practical result of this legislation will be that many civil courts shall have to be closed and very little work will remain for the judicial officers. Legal practitioners also shall have very little work to do in the civil courts; whether they are allowed to practise before these Boards or not, many of them will not be able to remain in towns. In that case, Sir, I think that some munsifs of proved ability, who have got sufficient experience, at least eight years' judicial experience,—who are generally considered to make good judges—should be appointed to preside over these Boards. They may also act as itinerant presiding officers, visiting one place after another when their work in one locality has been finished. For Chairmen of these Boards it is desirable that they should be rather outsiders than men of the place. It is very necessary because there is a great deal of party factions in the mufassal. They should be men who with the help of the other members of the Board may be able to devote some time and remain there for a few

days without any difficulty and give full attention to the consideration of the work involved. The members of the Union Boards are not often spoken of well and we very often hear complaints about them. Therefore it is very necessary that the work of the Board should be done by really efficient men with judicial experience. Even in the small cause court where a suit may be filed for two annas only judicial officers are engaged in hearing such cases. The Boards will have to deal with cases involving large sums of money and therefore men with good experience of judicial work should be engaged here. It is also absolutely necessary that the presiding officer must also be a paid man. Labour of love cannot be expected from a man whose considerable time and attention is required to be devoted to the work. The prestige of the British justice should not be allowed to suffer. What the motive is it is difficult to guess. Some amount of compulsion will have to be exercised and in that case if as a result of this provision many take advantage of it, practically many of the civil courts will have to be closed and Government revenue will thus suffer and many will be thrown out of employment. In considering the utility of the question we must see that justice may not suffer in any way and it is the concern of all of us to see that real justice is done. Government should therefore be very careful in selecting the presiding officers of the Boards. I fully agree with the views already expressed by Mr. Ray Chowdhury and in addition I suggest that the presiding officer should receive some remuneration I think some of the munsifs and sub-judges might be spared for taking up this work, going from place to place and doing the work. I do not think there can be any difficulty about it and whatever expense there may be incurred on that account should not be grudged by Government

Rai Bahadur AKSHOY KUMAR SEN: Sir, I beg to move that in clause 3(2) in line 1, after the word "Chairman" the following be inserted, namely:—

"who should be a member of judicial service and not below the rank of a senior munsif."

Sir, my submission is that the Chairman of the Board should be a member of the judicial service not below the rank of a senior munsif. In support of my motion I beg to submit that the Boards have been empowered under the provisions of this Bill to try rent suits and other money suits of unlimited value and complicated questions of fact and law must therefore arise in such suits. So persons having experience of administering civil law, such as munsifs and sub-judges who are members of the judicial service, should be Chairman of such Boards. I submit that under clause 13 we find that a debtor, while giving a list of his debts shall have to supply the names of his creditors and in a rent suit if the debtor names only one landlord to be the recipient of the rent excluding others either through ignorance or with a purpose,

we do not know—at least we do not find within the four corners of the Bill—what will happen in a case when the person named by the debtor under clause 13 does not appear and if in his absence an award will be given and whether any suit for the rent of the period can be laid before the Board. Clause 13 may be drafted that the very person who has been named as the landlord will be debarred from suing for rent or any other persons. I do not know what will be the form of the notice which will be prescribed by the rules to be framed by Government. I do not know also whether a general notice will be served and all persons interested in getting rent will be called upon to prove their dues. So complicated questions of title will arise. So I do not know how the Chairman or members of the Board having no knowledge whatsoever of civil law would be able to try such cases. For the interest of the litigants—the debtors and creditors as well—I do not see why the interests of the debtors are to be simply looked after, but the interests of the creditors should also be safeguarded. Government cannot, and for the matter of that anybody cannot, say that in framing the provisions of the Bill the creditors' side has not been overlooked. The creditors' interests should also be looked after. Under these circumstances I humbly submit that the Hon'ble Member in charge will kindly take into consideration such cases as may arise—I have given a concrete example of a rent suit in which complicated questions of title and law and facts may arise. Therefore in the interests of the litigant public the Chairman should at least be an experienced member of the judicial service. I do not know why Government is so much apathetic and ungenerous towards the lawyers. Most of my hon'ble friends while opposing an amendment like this will perhaps say that lawyers must not come into such Boards. In criminal cases the jurors and assessors who are not lawyers may serve the purpose as they have to deal with cases of *Kil* and *Char* as in such cases no real legal training is absolutely necessary; but you are empowering these Boards to deal with cases which will involve complicated questions of law and fact. Therefore my submission to the House is that not only lawyers practising in courts but such lawyers as have the good fortune of being recruited to the Bench are going to be banned alike. I find that high officials of Government have always to refer complicated questions of law for interpretation to the Advocate-General or to the Government Pleader, but munsifs and sub-judges never refer such questions to the Government Pleader for interpretation. Whenever the Local Government refers a complicated question of law to the Advocate-General for his opinion, his opinion is taken as gospel truth. My submission is this; that the new Act is going to be enacted and lawyers as Chairmen should be there for the purpose of interpreting every section of this new Act. A novice will not be able to interpret or to explain the drift of the section as in this Act. My submission is, considering all these facts for the interest of the public, the litigants and the whole of

Bengal, that the Hon'ble Member will consider this aspect of the thing and kindly accept one of these amendments and allow that the Chairman at least should be a member of the provincial service having experience of administration of civil law.

Mr. PRESIDENT: Would you (Rai Bahadur Satya Kinkar Sahana) like to move your amendment? I think your purpose is served by amendment No. 119.

Rai Bahadur SATYA KINKAR SAHANA: I would like to move it.

Mr. PRESIDENT: Is it necessary? I ask you to consider that. You can speak on the amendment of Babu Satish Chandra Ray Chowdhury later on.

Rai Bahadur SATYA KINKAR SAHANA: All right, Sir.

Mr. PRESIDENT: What about your (Kazi Emdadul Hoque) amendment No. 124?

Kazi EMDADUL HOQUE: I would move it.

Mr. PRESIDENT: But I do not think it is necessary to move that. Your purpose is served by Babu Satish Chandra Ray Chowdhury's motion No. 117. So you better give up amendment No. 124 and move only No. 123. Will that do?

Kazi EMDADUL HOQUE: All right, Sir. I beg to move No. 123 as follows:—

That in clause 3 (2), in line 1, after the word "Chairman" the words "who has legal experience as a member of the bar or as a member of the bench for a period of not less than ten years" be inserted.

Sir, I do not know what is at the back of the mind of the Government. Of late we have marked the attitude of Government. In every case we find that Government has lost confidence in the judiciary and they want to invest all powers in the executive. Here also I think the Government will invest the powers in the officers of the executive service to discharge the functions of the Chairman. We mufassalites who have better experience about things know it well that the duties of the Chairman will not be served duly by the executive. We here have got very bitter experience about the duties of the executive and we would say with one voice that the sooner the cultivators for whom this Bill is intended are relieved of such officers the better for them. Sir, the executive in most cases act upon common sense——

Mr. PRESIDENT: How do the executive come in here? Please leave them out.

Kazi EMDADUL HOQUE: I think the Hon'ble Member in charge of the Bill said the other day in his speech that the subdivisional officers would be——

Mr. PRESIDENT: That matter is closed. Let us hear something about judicial officers and of members of the bar whom you want to be Chairmen of the Boards.

Kazi EMDADUL HOQUE: The Chairman of a Board will have to decide some intricate questions of law as well as of fact. When the case will be presented to the Board the Chairman will have to decide whether a particular debtor has a right to come in and whether a particular debtor is a *raiyat* or under-*raiyat* according to the definition laid down in the Bengal Tenancy Act and whether the bond has already become time-barred and cannot be placed before the Board. All these things will have to be decided by the Chairman. So legal advice is necessary as to whether a claim is tenable or not That will have to be decided and for the matter of that legal knowledge is necessary. So I suggest that the Chairman should be recruited from the legal profession. I do not know why some of the gentlemen, who do not happen to belong to this noble profession, play foul about the lawyers and deprecate them in season and out of season May I ask them whether Bengal has not produced men like Sir Ashutosh Mukharji, Dr Rash Behari Ghose, Lord S. P. Sinha, and other illustrious men, including our Hon'ble Member in charge of this Bill? Do not these illustrious persons belong to this noble profession of lawyers? Here it is very easy to find fault with lawyer and to columniate them but we find that those gentlemen who talk loud against them have very often to approach the lawyers for their valuable counsel and it is these lawyers who save many of them from the pitfalls in the law So I think they should not be afraid of the lawyers. Lawyers do not give counsel privately. Some gentleman has remarked that secret counsels are given by the lawyers. Lawyers never do that but when people come to lawyers they advise them openly. They do not give secret advice to anybody. That is not their profession. Whatever the lawyers do they do in open court and in public. In fact they are the saviours of mankind here. Even Mahatma Gandhi at whose command the people of India rise and sit is a lawyer. Thus lawyers have a unique position in the world: It is indeed a man having substantial legal experience and having a real understanding of things that will understand how justice will be meted out to the agricultural debtors. It is the legal luminaries that will be valuable for the discharge of the functions of the Chairman and ought to be appointed by the local Government. Such persons may be found in the legal profession. They may be picked up from the judiciaries or any Government service. Judicial officers having experience in judicial matters and also in legal matters should be selected for this purpose. If a layman is appointed to sit as

Chairman of the Board, certainly he will give his judgment as a layman and it will be disastrous in any case to the cause of the cultivators for whom the Bill seeks to give relief. So it is not only in the interest of the appointment of Chairman but in the interest of the debtors that legal assistance will be necessary. So I think they should primarily be recruited from the legal profession because they always deal with legal affairs and if the Government do not accept this proposition of mine, if they are averse to lawyers, they may take some judicial officers having experience in the field of law.

With these words I beg to commend my motion to the acceptance of the House.

Mr. PRESIDENT: At this stage I should take up motion No. 135; but, I think it need not be moved, as amendment No. 117 which has already been moved is practically identical. Mr. Ray may speak on that.

Mr. SARAT KUMAR ROY: All right, Sir. The term "debt" as has been defined in this Bill, includes both secured and unsecured loans. If disputes arise between the creditors and debtors regarding the validity or otherwise of such secured loans or amongst the secured creditors themselves regarding their respective priorities, I am sure intricate questions of both law and fact will arise before the Board in the determination of debts and making of the awards.

Sir, one conspicuous aspect of this piece of legislation is that it seeks to exclude lawyers from the field. If that is accepted by the House, I do not understand how the Board will be able to decide such intricate questions of law unless the members themselves or at least their Chairman is well versed in the civil laws of the country. Sir, the decisions of the Board shall unquestionably be judicial pronouncement on disputes regarding the contractual relation befween the parties before it. The Select Committee have provided in the Bill that the ordinary laws meant primarily for ensuring proper decisions on such question, such as the Evidence Act and the Civil Procedure Code, shall not apply to proceedings before the Board. If these amendments be accepted by the House, I am afraid the conduct of business before the Board shall have to be governed mainly by the exercise of discretion of the members themselves.

Sir, this clause 3 (2) which I am proposing to amend is altogether silent as to what should be the respective qualifications and necessary experience of the members of the Board and specially of their Chairman. Nowhere in the Bill we find anything on this point. This puts me under grave apprehensions and I doubt very much whether the members shall be in a position to deal with the cases before them satisfactorily unless they themselves be sufficiently experienced in the discharge of such duties. If however it be deemed inexpedient to enlist the members

of the Board from persons having legal experience, I think it is imperative on us to lay down that at least the Chairman of the Board should always possess sound judicial experience. So, Sir, I think the essential qualification of the Chairman should be that he should have judicial or at least legal experience of not less than ten years.

Mr. PRESIDENT: Order, order! The Council stands adjourned till 2 p.m. on Monday, the 2nd December, 1935.

Adjournment.

The Council was then adjourned till 2 p.m. on Monday, the 2nd December, 1935, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Monday, the 2nd December, 1935, at 2 p.m.

Present:

Mr. Deputy President (MR. RAZAUR RAHMAN KHAN) in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers and 93 nominated and elected members.

UNSTARRED QUESTIONS

(answers to which were laid on the table)

Process-servers.

1. Maulvi ABDUL HAMID SHAH: (*a*) With reference to the reply to unstarred question No. 2, dated the 12th February, 1935, will the Hon'ble Member in charge of the Judicial Department be pleased to state when the publication of the Special Officer's report along with the recommendations of the High Court may be expected?

(*b*) Will the Hon'ble Member be pleased to state the decisions of the Government in the matter?

(*c*) Are the Government considering the desirability of relieving the process-servers from all other duties except the process-serving, according to the opinion expressed in the reply to unstarred question No. 18 of the 14th March, 1921?

MEMBER in charge of JUDICIAL DEPARTMENT (the Hon'ble Sir Brojendra Lal Mitter): (*a*) The Special Officer's report and the High Court's recommendations are not intended for publication.

(*b*) The reorganisation of the establishment of process-servers, office peons and night watchmen has been decided upon. Details are being worked out in consultation with the District Judges.

(*c*) They have no other duties except process-serving, but during such part of the interval that must elapse between journeys as is not required for duties in connection with process-serving they will be employed on miscellaneous office work.

Maulvi ABDUL HAMID SHAH: Will the Hon'ble Member be pleased to state if it was the intention of Government beforehand not to publish the report?

The Hon'ble Sir BROJENDRA LAL MITTER: Sir, it was never intended to publish the report.

Maulvi ABDUL HAMID SHAH: With reference to answer (*c*), will the Hon'ble Member be pleased to state the nature of the miscellaneous work that these process-servers have got to do, when they have no work in connection with process-serving?

The Hon'ble Sir BROJENDRA LAL MITTER: There are various sorts of work that has to be done in office, and it is not possible to say precisely what work will be allotted to any process-server when he is not engaged in process-serving itself.

Maulvi ABDUL HAMID SHAH: Is it not the duty of the office peons and night-guards to do miscellaneous office work? May I know the nature of the miscellaneous work?

The Hon'ble Sir BROJENDRA LAL MITTER: The expression, "miscellaneous work" is not capable of a precise definition.

Maulvi SYED MAJID BAKSH: Does it mean work of a private nature in the course of their duties in the houses of officers?

The Hon'ble Sir BROJENDRA LAL MITTER: Sir, the expression is miscellaneous office work——

Mr. DEPUTY PRESIDENT: It is not necessary to answer that question.

GOVERNMENT BUSINESS

LEGISLATIVE BUSINESS

GOVERNMENT BILLS.

The Howrah Bridge (Amendment) Bill, 1935.

The Hon'ble Nawab K. G. M. FAROQUI, of Ratanpur: Sir, I beg to move that the Howrah Bridge (Amendment) Bill, 1935, be referred to a Select Committee consisting of the following members:—

(1) Babu Jatindra Nath Basu,

(2) Khan Bahadur Muhammad Abdul Momin,

(3) Rai Bahadur Dr. Haridhan Dutt,

(4) Mr. Sarat Chandra Mittra,

(5) Maulvi Muhammad Saadatullah,

(6) Mr. D. J. Cohen,

(7) Mr. H. S. Suhrawardy,

(8) Mr. W. H. Thompson,

(9) Khan Bahadur Maulvi Emaduddin Ahmed,

(10) Mr. H. S. E. Stevens, and

(11) myself,

with instruction to submit their report within three days from the date of the motion being carried in Council, and that the number of members whose presence shall be necessary to constitute a quorum shall be five.

Sir, in moving that the Bill be referred to a Select Committee, I think it would be as well if I explain to the House very briefly the necessity for this measure. As the House is aware, the question of replacing the present bridge, which was opened to traffic as far back as in 1875, has been in contemplation for over a decade and a half now. The present bridge was built by the Bengal Government who subsequently made over its management to the Bridge Commissioners. As a result of the earlier examinations and discussion it was decided that the new bridge will be constructed by the Commissioners for it, and it was found that a new Act was necessary for this as the purpose could not be achieved by amending the Act of 1871.

As the House is aware, the Howrah Bridge Act, 1926, was passed with a view to enabling the construction of a new bridge to be taken up by the Commissioners for that bridge. The Bridge Commissioners were appointed by the Act, and the Act, as it emerged from the Legislative Council, and as it now stands, permit the Bridge Commissioners to raise a loan. There is some doubt, however, whether under the new Act, as it now stands, the Bridge Commissioners can raise more than one loan, and the removal of this ambiguity is one of the reasons for bringing forward the present Bill. Clauses 2, 3, 6 (*a*) and 8 of the Bill have been inserted with this end in view. The only other important clause in the Bill is clause 9 which is intended to exempt the bridge and its adjuncts from municipal taxation. Government have been advised that, under the law as it now stands, the Howrah Bridge would be liable for assessment to municipal taxes under section 124 of the Calcutta Municipal Act of 1923 and also under the same section extended to the Municipality of Howrah. Government consider that, on general principles, a bridge like this which is for the benefit of the general public, and particularly the public of Howrah and Calcutta, should be exempt from municipal taxation. A clause has, therefore, been inserted to make the position perfectly clear.

The other clauses of the Bill have been necessitated by changes in the constitution of municipalities, as, for instance, the creation of the Garden Reach Municipality, by amendments in the Municipal Acts, and by the obvious necessity for taking power to levy a tax on season tickets and on the ferry service plying within the limits of the Port of Calcutta, whether managed by the Calcutta Port Commissioners or by any private party. This clause, I should explain, places on a well-defined basis the power to levy a surcharge on somewhat similar traffic, already conferred by the Act of 1926.

With these words, Sir, I move.

Rai Bahadur Dr. HARIDHAN DUTT: Sir, I find that the Hon'ble Minister has suggested three days' time by which the report of the Select Committee must be submitted, and I also find, Sir, that I have been honoured with a seat on the Committee. May I enquire from him as how it will be possible to have the Select Committee's report made out and published within three days from to-day? To-day is the 2nd, and by the 5th of December—and I presume that is the correct calculation—the report must be submitted to the Council. I think it is neither practicable nor possible, and I suggest that the time should be extended by a few days more. Then, Sir, I find there is a difference of opinion in respect of a very important item, namely, assessment of the Howrah Bridge by the Corporation of Calcutta. So far as I can remember—I have not got the papers with me—it was laid down in the last Act that the Corporation will have to pay ½ per cent. additional taxation from the date of notification by Government in accordance with the Act. Sir, the Corporation might justly ask the Council to consider that if they are to be deprived of the advantage of assessing the Howrah Bridge, they might reasonably request the Council to reduce their taxation from one-half to a quarter per cent. I do not know, Sir, whether this point will be raised by the Corporation, but if it is raised, would it be possible for us to settle the whole thing by to-morrow and another day.

Then there is another question and that relates to the Tramways Company. I understand that a yearly subsidy will be paid by the Company as tract rent, and that subsidy is going to be not less than Rs. 1,25,000. A dispute has arisen as to whether the Corporation would be legally liable to pay it in case the whole concern comes under the control of the Corporation. That point has got to be settled first, especially as the Corporation has refused to agree to it. In the circumstances, Sir, I personally think that it is worth while to reconsider the whole situation, and these things will take a longer time than the next two days. Therefore, I humbly suggest to the Hon'ble Minister in charge of the Bill that the Select Committee should be given a

reasonable time to consider these important aspects before bringing out their report.

Mr. S. M. BOSE: Besides the points raised by my friend, Rai Bahadur Dr. Haridhan Dutt, there is another difficulty. In case the tramways are acquired by the local bodies concerned, on whom will fall the liability to pay the annual rent of Rs. 1,25,000—on the Corporation of Calcutta or on the Howrah Municipality? I think that question will take some time to be settled. I am constrained to say, therefore, that the time given to the Select Committee for submitting their report ought to be extended.

Mr. H. S. E. STEVENS: As regards the first point raised by Rai Bahadur Dr. Haridhan Dutt, namely, the question of the principle of exemption of the bridge property from municipal taxation, that matter will, I presume, be fully discussed here in the House, when the Bill, as it emerges from the Select Committee, is brought before the House. As regards the second point, namely, the contribution to be made by the Tramways Company as track rent, that has not been included in the present Bill, and the matter does not, therefore, arise at all, will not arise in the Select Committee, nor when the Bill is discussed here. There is only one clause in the Bill about which there is likely to be any difference of opinion, and that is the clause regarding exemption from taxation. That being so, Sir, the time-limit of three days for the Select Committee would appear to be sufficient.

The Hon'ble Nawab K. G. M. Faroqui's motion, that the Howrah Bridge (Amendment) Bill, 1935, be referred to a Select Committee consisting of, etc., was put and agreed to.

The Bengal Agricultural Debtors Bill, 1935.

(At this stage, discussion on the Bengal Agricultural Debtors Bill, 1935, was resumed.)

Rai Bahadur SATYA KINKAR SAHANA: Sir, I rise to support the amendment that is before the House, though my reasons for doing so do not coincide with the arguments adduced by the previous speakers. Sir, I was brought up in a district which was formerly included within a non-Regulation area, and therefore, I used to see, in my younger days, the functions of the judicial and executive officers vested in one and the same person. The Deputy Commissioner was also the Subordinate Judge, and some of the Deputy Collectors were entrusted with the functions of Munsifs. As far as I can remember, they used to administer fair justice in most cases, although in some

cases, no doubt, there was a muddling as is bound to happen in the case of all human agencies—whether executive or judicial. I have not much dislike, therefore, for executive officers or any intense infatuation for judicial officers. It is said that water takes its colouring from the soil over which it flows, and perhaps my long stay in a non-Regulated area, in the earlier days of my life, has blunted my power of discrimination between the executive and the judicial or has created an unconscious bias in my mind towards executive officers. Further, Sir, I am not a lawyer, and though I tried my best to chew the hard bones of law, they proved too tough for my teeth, and I had to beat a hasty retreat. I do not think, or rather I do not hold, that lawyers make the world, as my friend the Kazi Sahib says. Rather I hold that the world, as it is, owes its present condition to warriors, statesmen, philosophers and prophets. If the shades of all the lawyers from Pericles down to Dr Rash Behari Ghosh were invoked and offered the honour of being the makers of the world, I believe they will thankfully decline the honour and will point their fingers towards Confucius or Budha, Jesus or Mahomed, Alexander of Hannibal, Julius Cæsar or Napoleon, Plato or Aristotle, Byas or Kapil and Sankar or Luther. I could not have supported a motion like this or could not have tabled a similar amendment myself, had I not been cognisant of the fact that our people in rural areas are possessed with too much of law. I know it for myself, and I have heard with my own ears in the precincts of the courts of a Subdivisional Officer, one illiterate villager saying to his friends, " ডেপুটী আবার হাকিম, আরতলা আবার পাখী " That is perhaps not a solitary case, Sir, and that mentality prevails in the rural area If Government wants that this law should be functioning properly in the country and should be acceptable to the people, I think judicial officers should be made chairmen of these Debt Conciliation Boards, though I know that they are not going to be anything but " শালিশী বৈঠক " and the srvices of judicial officers would not be required for the purpose. If I am not wrong in my surmise, I think the files of Munsifs will dwindle down as soon as this Bill is enacted into law and is functioning in the country. The Munsifs then will have little work to do, and I cannot understand why Government should not avail themselves of this opportunity and make the law acceptable to the people for whose benefit it is meant, by accepting this amendment.

With these words, Sir I would request the Hon'ble Member to try, if possible, to accept this amendment.

Khan Bahadur MUHAMMAD ABDUL MOMIN: I would not have risen to speak on this motion, had not my friend Rai Bahadur Satya Kinkar Sahana referred to the question of making the Bill acceptable to the people by accepting this amendment. I do not know how he

can assume the authority to say that unless judicial officers are appointed Chairmen of the Boards, the Act will not be acceptable to the people. I do not know which people he means—if he means the so-called intelligentsia—members of the District Bar Associations and the like, perhaps he is right. If the Bill is not acceptable to that class of people, I do not think that that would bring about a calamity. The real people for whose benefit this measure has been brought are the cultivators who live in villages and who do not want administration of law, but want administration of justice, and it is absurd to say that unless the Chairman is a member of the Judicial Service and has judicial experience, justice will be denied. As a matter of fact, the underlying principle of the whole Bill is that what is wanted of the Board is tact to bring about a compromise between the debtor and the *mahajan*, and this can be done much more efficiently by officers and people who have local knowledge of men and things and above all are tactful, and that not much of the law or experience in law is necessary. Mr. Jitendralal Bannerjee interrupts me by referring to Circle and Settlement Officers. I am very strongly of opinion that much more substantial justice has been done by Settlement Officers and their assistants than has ever been done in the precincts of Law Courts. They go to the spot, they take evidence from people who do not come prepared to give evidence, and they collect the real facts which it is very difficult to ascertain by Munsifs sitting in their Courts where issues are worse confounded by the help of lawyers practising there.

But apart from that, Sir, the movers of these motions have not really appreciated the impracticability of having so many judicial officers to preside as Chairmen of these Boards—not to speak of Munsifs of eight years' standing, or of any standing at all. The number of such Boards will be enormous—perhaps there will two or three in each thana. Where will Government get so many judicial officers to be appointed as Chairmen of these Boards? If this restriction is made, Government will be forced to constitute one or two Boards only in the district headquarters and in subdivisional towns where judicial officers can be found. Previously also similar amendments were tabled in the case of Appellate Courts. Perhaps there was some justification in that case, although the sense of the House was against those amendments. I do not find any justification for the amendments which have now been moved, and we oppose all the amendments.

Maulvi ABUL KASEM: I also rise to oppose the motion of my friend from Bankura. He says that Chairmen of the Boards should be judicial officers not below the rank of a Munsif. Whatever the attainments of judicial officers may be, I say, Sir, judicial officers are the last persons who are to be associated with these Conciliation Boards. Khan Bahadur Abdul Momin has just said that we want men

of tact to bring about a conciliation between the parties concerned, but the judicial officers are persons who have never used tact, have never been called upon to use tact or exercise it. Secondly, Sir, I want it to be noted, and I say it with a full sense of my responsibility that judicial officers, in Bengal at any rate, have long lost the prestige and tradition of honesty so essential for the administration of justice.

Dr. NARESH CHANDRA SEN GUPTA: The only cause for my rising to speak on this motion is to give a reply to the unjustifiable remark made by Maulvi Abul Kasem against judicial officers. My learned friend probably knows very little of the work of the judicial officers in Courts; otherwise, he would have known that judicial officers are responsible for bringing about more compromises than he cares to know. It is not a fact that they do not exercise tact for the purpose. At the same time, Sir, I do not think that it is possible to support the amendments in the form in which they stand. The practical difficulties in the way are very great. The proper thing would be, and I suggest it for the consideration of the Hon'ble Member—the appointment immediately of all the Boards along with the numerous voluntary Boards, who have power only to settle by compromise, and the appointment of one compulsory Board for large areas, in which case it would be very advisable for them to have judicial officers as Chairmen. That is the real *via media* between the two extremes. The compulsory Boards will have to exercise very great powers, to administer practically the estates of insolvent debtors, to deal with the question of priority in the case of insolvents, and also with a great many other rather knotty problems in which a knowledge of Law would be of great help. For this Board, I think, it should be possible for Government to find a suitable number of judicial officers as Chairmen, especially when we remember that with the passing of this Bill, if it is made universally applicable, the work of a great many Munsifs will be reduced or will disappear. Having regard to that, if there is a paucity of such officers, perhaps the number of compulsory Boards might be reduced and their jurisdiction increased if necessary. I do not think that the compulsory Boards should be called upon to deal with many cases, but their existence is essential in order that voluntary Boards may succeed. Therefore, I think, the real compromise—a compromise which I hope Government will find it possible to accept—is the formation of compulsory Boards, no matter how many judicial officers are available.

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur: Mr. Deputy President, I have every sympathy with the motion moved by my friend, Mr. Ray Chowdhury—especially motion No. 118. The success of these Boards will depend largely on two factors—firstly, the

personnel of the Board, and secondly their number and their location. With reference to the personnel, it is necessary that the members of the Board should have some knowledge of the present law and should be persons not interested in the affairs of the villages. I do not agree with my friend the Kazi Sahib when he says that the Chairmen of the Boards should be recruited from the legal profession. He has cited several names of repute from that profession, but I might be permitted to say that there are other persons also, among the general public, who are equally reputed and have earned the confidence of the people, such as Sir Jagadish Chandra Bose, Sir P. C. Roy, and Sir R N. Tagore, etc. So, it is not essential that the Chairman of a Board should be a legal practitioner; all the more, I think it is necessary that the Chairman should have some knowledge of the present law and should have some judicial experience. I do not agree also that they should be recruited from Munsifs or Subordinate Judges. If such persons are appointed Chairmen of these Boards, our object, as well as the working of the Boards, will suffer much. The function of such a Board will be only to settle disputes between the debtor and the creditor—to compromise, first of all, the debts between the creditors and the debtors; and to decide the question of law which such matters may involve. But I do not think that for this purpose the services of persons having deep knowledge of law are required. They will not have to give any judgment, or to quote rulings of the Allahabad or the Bombay High Courts, or for the matter of that those of the Privy Council, but only to decide those questions on the present law and on strong common-sense. So, in my opinion, it would be sufficient for our purpose if the Chairmen of such Boards should have some experience in judicial matters. Of course, it would be better if these Chairmen could possibly be recruited from Munsifs or Subordinate Judges, but I would not press that it should be compulsory on the part of Government to appoint such men only. I have already said that the success of these Boards will depend on their number as my hon'ble friend, Khan Bahadur Abdul Momin, also has said: if there are more Boards, it would be more successful. If we insist on the appointment of Munsifs and Subordinate Judges, it would mean that the number of the Boards will be curtailed, as many officials of that type will not be available and thus this would tell to the great disadvantage of both the creditor and the debtor, as they would have to travel long distances to settle their cases, and our object also will, to a great extent, be frustrated.

Sir, some members are of the opinion that retired Munsifs and Subordinate Judges are available in the villages, but I might be permitted to say that that is not the fact. Formerly, there was a tendency among Government servants to live in villages after retirement, but at the present time we find that they reside largely in the towns, and, as my friend the Rai Bahadur says, in the Lake Areas,

and in other healthy quarters. So they do not go to live in their own villages for fear of ill-health. If my friends have the idea that such officers will be available, it will be wrong on their part to think so. Khan Bahadur Abdul Momin said that more justice is done by settlement officers than by others, but my view is that it depends upon the experience that an officer has. If a Settlement Officer had greater knowledge and experience of such matters, he would decide cases more justly than others. So to my mind the best course would be as Dr. Sen Gupta has suggested that for the Appellate Court the Chairmen should be persons from the judicial ranks and for the other Courts it will suffice for our purpose if persons of some judicial experience and strong common-sense are appointed. It would be better, of course, if persons from the ranks of Munsifs or Subordinate Judges are appointed, but I do not press this point or want to make it obligatory on the part of Government to appoint such and such persons only, as Chairmen of the Boards. On the other hand, I am in favour of other class of people besides the lawyers

(At this stage Mr President entered the Chamber and took the Chair, which was vacated by the Deputy President.)

Maulvi RAJIB UDDIN TARAFDER spoke in Bengali in opposition, the following being an English translation of his speech :

Mr President, Sir, I protest against all the amendments from No 117 up to No 124, because it is our duty as members of the Council to think thoroughly about the aim and object of the Bengal Indebtedness Bill It is our first business to consider for whom and why the Bill is constituted I think the Bill is for the agriculturists who live in villages If you want to do any benefit to them, you are to do that through persons who live around them in villages and know everything about them It will be a matter of much ado about nothing if you select men of education who know nothing about them. I think the agriculturists are in debt (crores of rupees) only for the negligence of the intelligentsia of the country who claim to be the patrons of the peasants in yore At present we have no faith in those patrons. Debt Conciliation Board should be framed by the villagers themselves and the members of that Board should be appointed or elected from the villagers. The Chairman of the said Board should be elected by them. It is my meditated idea. For this I protest against those amendments of my colleagues and friends I firmly request my friends to withdraw all the amendments about the proposed Chairman of the Board to be an experienced Judge of ten years or an experienced Munsif of eight years or a member of the Bar Association, etc.

The Hon'ble Khwaja Sir NAZIMUDDIN: It is very gratifying to find that no member of the Select Committee to whom this point was explained has supported this amendment. I am sure the members who

have proposed this amendment, if they were told what is contemplated under this Act, would immediately withdraw their amendments. Sir, the Board of Economic Enquiry contemplated the appointment of 1,374 Boards for 16 districts and 786 Boards for 9 districts; that is in all the appointment of 2,160 Boards was contemplated by them throughout the whole of Bengal under the Act, excluding Darjeeling. They also thought that it would take about 3 years to deal with all the cases that would come before them. But I personally consider—this is my personal view only—that Government may have to appoint considerably more than 2,000 Boards in view of the very large number of applications that will come before them. Therefore, it is obvious that you cannot get judicial officers of ten years' experience or merely judicial officers to be Chairmen of these two thousand Boards. Besides most of these Boards will be Boards entirely for the purpose of bringing about an amicable settlement between the debtors and creditors. They will not have to employ any compulsion whatsoever; all they do is to bring the debtors and creditors together and provide facilities to enable them to come to an amicable arrangement. If either of the parties refuse to agree to a compromise, then the whole thing falls to the ground. So I fail to see why, under these circumstances, there must be a judicial officer or a person with judicial experience to preside over these Boards.

Then, Sir, before I proceed further to deal with the point raised by Dr. Sen Gupta, I would like to say on behalf of Government that they record their very emphatic protest against the remark made by Maulvi Abul Kasem against judicial officers, which is absolutely uncalled for and has been made without any justification.

Mr. PRESIDENT: Was that remark made to-day during my absence?

The Hon'ble Khwaja Sir NAZIMUDDIN: Yes, Sir. Now it has been suggested that as far as the Boards which will have compulsory powers are concerned, they should have a judicial officer as Chairman. There is no amendment to that effect, and it is very difficult to have a provision definitely to that effect, because there are various clauses concerned. There is an amendment coming, I am told, but it is very difficult to accept an amendment of that kind. It is understood that as far as possible Government will appoint judicial officers, but this is an experimental measure and the hands of Government should not be tied on that question. We may have some Boards working without compulsory powers which may be able to inspire the confidence of both the creditors and the debtors and both these parties may want that compulsory powers should be given to such a Board to settle certain cases. It is not an impossible thing. The creditors may themselves want certain Boards to be empowered under clause 21, viz., about insolvency. There may be cases where the creditors know very well that a particular

debtor is not in a position to pay his debts and the creditors would be prepared to have whatever they could get, perhaps leaving the debtor with one acre of land plus his dwelling house. Now, because the Board has not got the powers, it may not be possible for it to give effect to this and to declare the man insolvent. Therefore, both the debtors and creditors having absolute confidence in a particular Board may want these powers to be conferred upon it. But if the hands of Government are tied regarding the appointment of a judicial officer, there may be delay and the parties may be prevented to have the Board immediately in that area, because the Chairman must be a judicial officer. Therefore, while in the ordinary course practically judicial officers or men with judicial experience will be Chairmen of these Boards, Government would like to have the power to empower certain Boards with compulsory powers which have by their work inspired the confidence of both the debtors and creditors. In view of this explanation, Sir, I would request the movers of these amendments to withdraw their motions.

The following amendments were then put and lost:-

That in clause 3 (2), in line 1, after the word "Chairman," the words "who shall be a judicial officer having at least ten years' experience as Judge of Civil Court" be inserted.

That in clause 3 (2), in line 1, after the word "Chairman," the words "with experience of administration of civil law" be inserted.

That in clause 3 (2), in line 1, after the word "Chairman," the words "shall not be below the rank of a Munsif of proved ability of at least eight years' judicial experience" be inserted.

That in clause 3 (2), in line 1, after the word "Chairman," the following be inserted, namely:-

"who should be a member of judicial service and not below the rank of a senior munsif."

That in clause 3 (2), in line 1, after the word "Chairman," the words "who has legal experience as a member of the bar or as a member of the bench for a period of not less than ten years" be inserted.

Mr. PRESIDENT: As we skipped over amendment No. 125 on Friday last, it should be taken up at this stage.

Babu KISHORI MOHAN CHAUDHURI: Sir, I beg to move that in clause 3(2), lines 2 and 3, the words "of not more than" be omitted.

In moving this amendment my idea is that there should be at least four members. I have got some other amendment which will clear the idea. I think that these words should be omitted as otherwise if there are three members it is not known in what proportion they should be elected. My idea is that half should be elected by the local people and half should be nominated by Government. I therefore propose that these words should be omitted.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I oppose this amendment on the ground that if in any particular area both the creditors and debtors want to have a Board of three members, there is no reason why we should be bound down to have five members. Therefore I I oppose this amendment.

The amendment was put and lost.

Babu KISHORI MOHAN CHAUDHURI: I beg to move that in clause 3 (2), in line 3, after the word "members" the words "half of which is," be inserted and after the word "Government" at the end the words "and the other half is to be elected by the tax-payers of the locality" be added.

Sir, in moving my previous amendment I explained that my idea is that not only the nominated members should be sufficient but some of the members at least should be men who are liked by the people concerned and it is very desirable that at least some of them should be elected as is done in the case of union boards and other bodies. It is not always that we get the best men by nomination. But if the principle of election is introduced, then we may get such men who enjoy the confidence of the people. I, therefore, propose that the principle of election should be introduced here and some of the members should be elected. I hope this proposal will be accepted by Government.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I am afraid that it is a very dangerous suggestion to have half the members of the Board elected from the tax-payers of the locality. First of all, it is too vague to be given effect to and besides you cannot guarantee that the best men or the most popular men would be elected. There may be two or three men belonging to one group and there may be a third man who is not very desirable. Therefore by election you can never be certain of getting the right type of men. A man may have great influence but may have a very bad reputation. Therefore, I think it would be very dangerous to accept this motion. I would, therefore, request the mover to withdraw it.

The amendment was then put and lost.

Kazi EMDADUL HOQUE: I beg to move that in clause 3(2), in line 3, after the word "members," the words "half of whom at least shall be non-officials having legal experience" be inserted.

Sir, the Bill provides that the Board shall consist of five members, viz., one Chairman and four members, and all of whom shall be appointed by the Local Government. Most probably the Local Government shall appoint some men who will be Government men. We want that at least half of the members constituting the Board shall represent the people, that is they should be popular men. Government will probably not appoint men whom the people would like to be on the Board.

The people need not have any misgiving as to the men whom Government will appoint as non-official members and this is the reason I have put this amendment. But we know very well that in any and every case of a Board like this, Government is bound to appoint men of their own liking, especially Government officers, but as people would like some of their own representatives to sit on their behalf on the Board, it is only in the fitness of things that Government should see its way to have at least half the number, excluding the Chairman, to act on behalf of the people. People have lost confidence in Government servants. Whatever the Government does nowadays if the people have their own representatives they have more confidence in them, and it is desirable that their own people should be on the Board, that they should sit as their administrators on the Board, and I say most emphatically that they have more confidence in men of the legal profession. They might very well like that their legal friends should sit on the Board, and it is absolutely necessary that men having legal knowledge should watch their interests, because many cases may arise which may involve intricate legal questions of law. Supposing a claim is time-barred, who on the Board is able to say that such a claim is not tenable? If those members of the Board have no legal knowledge, they will give a decree notwithstanding that the claim is not according to law. Therefore, at least two of the members with legal knowledge should be allowed to sit on the Board, and it will be in the interest of the debtors and not in the interest of the creditors that such men should be allowed to sit on these Arbitration Boards. That will make the position clear after this Bill is put into operation.

I may mention that many gentlemen here are sneering at the idea of legal luminaries on the Board. I do not see why they should do so, because everywhere, in one way or the other, we are indebted to these members of the legal profession, and I therefore think that they should think over and over again and see their way to accept the motion.

With these words I put my motion before the House.

The Hon'ble Khwaja Sir NAZIMUDDIN: It appears to me that the Kazi Sahib is making strenuous attempts to make this Bill unworkable. He has suggested that of all the members, two at least should have legal experience. How does he propose to find half the members of a Board, having legal experience in a village? Supposing that he does so, it is quite possible that they will be either debtors or creditors. In these circumstances what is going to happen to the Board with half of the members creditors, and the other half debtors? Suppose they are men in whom the public have no confidence? In those cases there is not likely to be any Board whatever. Government contemplate having all the members of the Board non-officials, so there is no reason to provide that half should have legal experience. As a matter of fact, our difficulty is that we shall not be able to get an

official for a Chairman. Why is the Kazi Sahib pleading for a Board that should consist of half officials and half non-officials? The Board will consist of non-officials. I have already explained, it is very difficult to accept the suggestion that members should have legal experience. Then, again, the term is so vague. What is legal experience? Would you consider a tout as having legal experience? I am sure many words are not required to oppose this motion.

The amendment was put and lost.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that in clause 3(2), in line 3, after the words "other members," the words "none of whom shall be either a debtor or creditor under this Act" be inserted.

My amendment is rather in support of the Government view on this particular point, that is as regards the composition of the Board. I leave the lawyers alone; we have had enough of them the last two days; I think nobody should worry about lawyers any longer, but here I am on firmer ground. I am on the same ground as the Hon'ble Member. The point is, you may or may not have judicial officers on these tribunals, on the ground that they are arbitration Boards, though arbitration Boards in name only. We find that some of the provisions are really very drastic, and the Board will wield very great powers in regard to certain decisions on particular matters. But apart from the question of judicial officers being necessary or not, there cannot be any gainsaying the fact that if this measure is to be popular, if it is to serve the purpose which it has in view, in that case it cannot be denied that the Board should be independent as far as possible. That is to say, the Board should not have any particular colouring or leaning towards either creditors or debtors. We do not know whether the members will be nominated from the particular locality or from outside. If from the particular locality, then care should be taken that members so selected, especially in view of the fact that we have not got any assurance of the Chairman being a man of absolute independence, are men without any bias. We require that the members should be men who would not be subject to influence of either side. It may be a very difficult task for the Government always to find, if members are selected from the locality, that they are men of absolute independence of views and unbiassed and unprejudiced, and not subject to influence from any side, but the task should be faced. The Government cannot ignore that unless there are some rules according to which the members will be so selected and nominated as to secure independence of the Board, I apprehend that much of the good work which might otherwise be done, will not be possible to be done at all. There are areas in which there are schools and educational institutions, and in those areas it will not be difficult to secure members from outside the ranks of the debtors or the creditors either. In such areas the Board

hould be located and located in such areas that it will be possible to ind men to do justice between one party and another, without being nfluenced in any way, and particular care should be taken that men elonging to either creditors or debtors of the locality may not be ppointed as far as possible. Great care should be taken that this hould be avoided as far as possible. I submit this motion to Govern-ıent in regard to this one point, and also draw the attention of lovernment as to what should be done in this matter, whereby a speci-ic provision should be placed in the law to provide for this.

Dr. NARESH CHANDRA SEN GUPTA: The principle under-ying this amendment is absolutely unacceptable. If we were abso-ıtely sure that it would be possible to appoint Boards everywhere in hich there should be neither debtor nor creditor, there would be no arm in putting it in the Bill. Government ought to be very cir-umspect in the matter of the appointment of these Boards, and no erson should be appointed to a Board who has got interest either ay. Besides that, it ought to provide in the rules of procedure to e framed by the Government that no person having interest in a ispute should sit as a member of the Board. In such a case a provi-ion should be made for substituting another person for him. This I hink can be provided, and ought to be provided by rules made under lause 46(*c*) so far as the procedure is concerned. There should be a rovision barring a person, who has an interest in a dispute before the loard, from sitting on a decision in the matter concerned, and besides hat, I think Government should certainly issue instructions that as ar as possible the Board should consist of persons who are independ-nt of either debtors or creditors But in view of the uncertainty hether such Boards can be constituted everywhere, if this clause is rovided in the Bill, I am disposed to think that this clause should not e in the Bill.

Rai Bahadur AKSHOY KUMAR SEN: Although the intention of ıe mover of this amendment is very laudable, I cannot congratulate im as the wording of the motion is very vague and wide. It will be ıther practically impossible in a rural area to find a man like this ho is neither a debtor nor a creditor, so the Government would be ıther in a difficult position to find a man like this not only in the ıral areas, but in the other world. My submission is that in the ıufassal one is either a debtor or a creditor. A person who deposits is money in a savings bank is a creditor, also a person who lends ıoney to his friends is also a creditor, a person who borrows money :om a friend by way of *hoolat* is also a creditor. Such persons are) be excluded because the wording of the motion is not clear—"none f them shall be either a debtor or a creditor under this Act." The efinition is very wide, as will be found in this Bill. I find I cannot upport the amendment; therefore I oppose it.

The Hon'ble Khwaja Sir NAZIMUDDIN: Dr. Naresh Chandra Sen Gupta and the Rai Bahadur from Faridpur have already fully explained the difficulty that lies in the way of accepting or supporting this amendment. I would like to draw the attention of the House to the fact that only three amendments down below the list (in No. 132) Mr. Satish Chandra Ray Chowdhury had suggested that there should be on the Board representation of both the creditors and the debtors: how he reconciles the two really beats me.

The amendment was then put and lost.

Mr. S. M. BOSE: I beg to move that after clause 3(2), the following sub-clause be added, namely:—

"(3) In the case of Boards empowered by the Local Government under section 7, the Chairman shall be a person of not less than five years' experience as a judicial officer administering civil justice."

Mine is a more modest amendment than Nos. 117, 118, etc. As we all know, the Bill contemplates two kinds of Boards, a voluntary Board and a Board with compulsory powers under clause 7. My amendment refers to the latter class, and I say that the Chairmen of such compulsory Boards should have civil judicial experience. It is very necessary that this should be so. Let us see what are the powers of the Board authorised under clause 7:—

(1) where the "debtor," as defined, is jointly liable with other non-debtors under this Act for a debt other than arrears of rent; (2) where the creditor fails to submit a statement of claim within time, then the Board may make an order as to the amount of debts due and as to the existence or otherwise of debts not mentioned by him, (3) when creditors holding 40 per cent. or 60 per cent. of the amount come to certain arrangements; (4) grant of certificates under clause 20 when there is no agreement at all. The effect of the certificate will be to postpone the claims of all the creditors who do not agree until the debts mentioned in the award have been fully paid off. Then, lastly, there is the adjustment of debts of insolvents. That is a very important matter. All these matters will have to be considered by the second class of Boards I have just mentioned. It will be remembered that in the case of such Boards, lawyers are excluded: lawyers will not be allowed there at all. So a Chairman with judicial experience is required. Then it is submitted that the constitution of such Boards should be such as to inspire public confidence. The utility of a Board will be greatly hampered if the capacity or the independence of the Board is at all in doubt. So I ask that the Chairman, at any rate, of the compulsory Board, which may consist of five members, should be a person with civil judicial experience. Government themselves admit, whatever they may say here, that judicial experience is required. In the proviso to clause 4 accepted

by them (last line but one) they speak of an officer having judicial experience to carry on when a Board is dissolved. It is said they intend to entrust this power to an officer with judicial experience. That should be laid down in the Act itself—not provided by rules. In the amendment (No. 147) the Hon'ble Member is going to move "provided that when a Board is dissolved and the Local Government does not consider the appointment of another Board to be necessary or desirable, it may authorise any officer who has had judicial experience, etc." I submit that the first part of my claim that one of the members of the Board should have judicial experience is practically admitted by Government. That is beyond all question. It cannot say now that the matter should be left to rules when the Act itself, as accepted by Government, provides for an officer with judicial experience. I go further. The judicial experience should be on the civil side. I strongly object to a Deputy Magistrate, a Subdivisional Officer or any other executive officer being on these Boards.

Maulvi SYED MAJID BAKSH: Why?

Mr. S. M. BOSE: Why, I shall explain, because they are not competent for two reasons—their ignorance of the administration of civil law and their executive bias. As regards the first point their ignorance of the administration of civil law, the Board which I am thinking of will deal with various matters like the law of limitation, mortgage, priority, secured and unsecured debts, etc., which will be all Greek to the executive officer. He will not have the capacity or experience to deal with such branches of civil law. Only recently we had an experience of this. A member of this Council filed a nomination paper. He did not say that he was a graduate; he only said that he was an M.A., B.L. The learned Subdivisional Officer, as I may call him, rejected that nomination paper. That shows a great grasp of law. Secondly, we object to a Circle Officer or Magistrate because of his executive bias. It is bound to cause people to lose confidence in the independence and impartiality of the Board. I put the matter plainly and we all feel it. I may here, as an illustration of the effect of a Subdivisional Officer trying to have an Arbitration Board, refer to the ghastly failure of the Chandpur experiment. The Hon'ble Member in introducing the Bill went into frenzied raptures over the unique success of the voluntary system of Arbitration Boards at Chandpur, but the information I have received shows that it is just the opposite: that it is owing to the attempt of the executive officers at Chandpur to force arbitration on the people that all attempts have utterly failed and that those attempts have caused great bitterness of feeling between the creditors and the debtors. It has been complained at Chandpur that the creditors who have not agreed to the so-called arbitration or mandate of the Arbitration Board under the Subdivisional Officer have been harassed.

Khan Bahadur MUHAMMAD ABDUL MOMIN: What is your authority?

Mr. S. M. BOSE: I am coming to that. This is not the place to go into any details about those matters. I only refer to these matters to show that it is undesirable for the executive to have any finger in the pie. That is my whole point. I am not concerned here to go into any charges specifically against any officer. My sole purpose here is to show the utter undesirability of any executive officer having anything to do with these Boards. I need not go into details because it is irrelevant and Mr. President may rule me out of order. All these show that it is only people with civil judicial experience who are capable by their knowledge and experience to deal with matters that may come before the compulsory Boards, and it is only such people who will command public confidence. It is of the highest importance not only for the Board that the Board should be above suspicion but that the people should also feel that they are above suspicion. My friend Khan Bahadur Momin has just said that in his opinion certificate officers and Circle Officers do far better justice than Munsifs.

Khan Bahadur MUHAMMAD ABDUL MOMIN: I said substantial justice.

Mr. S. M. BOSE: I do not know the meaning of the word "substantial"; very often it amounts to substantial *injustice*. When officers in deciding cases take into account their private knowledge, whispers or private talk that is clearly inadmissible—that is how substantial justice is done. The less there is of such substantial justice in Bengal, the better for the people of Bengal. These Circle Officers do not know anything about the law of limitation; they have never heard of secured or unsecured debts; they never heard of priorities in mortgages and to suggest that they will do better justice than Munsifs is, on the face of it, absurd. I am not surprised that an executive officer of Khan Bahadur Momin's stamp should have said this. That is just what we expected. I repeat, therefore, that it is only civil officers with judicial experience who should be entrusted with these matters and, further, it is not necessary that it is only those who are in actual service should be empowered. As I have already said when speaking of appellate officers, those who have retired as Subordinate Judges or Munsifs, etc., may also be so empowered. I do hope that Government will have some regard for the feelings of the people in this respect. I ask that the Act should provide that the Chairman should be a man of judicial experience and then I ask that he should be a man of civil judicial experience. Government also admit that he should be a man of judicial experience. I want that to be put in the Act.

Maulvi TAMIZUDDIN KHAN: Sir, it is very painful to find Mr. S. M. Bose speak in a strain, which is not ordinarily his wont. I do not know what has embittered his feelings. It would appear from Mr. Bose's speech that there is a regular tug-of-war between the judicial and the administrative sides of Government, although perhaps Government is not at all aware of this. Mr. S. M. Bose wants that the Chairmen of the compulsory Boards must be judicial officers with judicial experience on the civil side. He was very eloquent when he spoke about the inability of executive officers to discharge the functions under the proposed legislation. I do not know, Sir, what his data are. As regards the judiciary there is no gainsaying the fact that our judicial officers on the civil side are an excellent body of officers and no one can think of disparaging them. Therefore, they are not in need of any certificate either from Mr. Bose or from anybody else on the floor of this House. But what is really surprising is that Mr. Bose thinks that our administrative officers are no good. I do not know, Sir, what his reasons are for saying so. He says that the matters to be dealt with under this Act will be of a complicated nature and that officers of the Executive Department will not be competent to discharge these functions. But we know that officers of the Executive Department do their duties perfectly well as Certificate Officers, as Partition Officers, as Revenue Officers, and as Settlement Officers. As such officers they have to perform many semi-judicial functions. Of course, I am not speaking of the administration of criminal justice in this connection. They are the only body of officers, practically speaking, who administer criminal justice in the lower grades. Therefore, I do not think that Mr. Bose is at all correct when he says that administrative officers will be unable to discharge such elementary functions as those of the Chairman of the compulsory Boards. I am afraid that Mr. Bose has not yet read the various clauses of the Bill carefully. Sir, are the functions that these Chairmen will have to exercise so difficult that Deputy Magistrates will not be able to discharge them? There are some members of the House who are of the opinion that these functions should mostly be discharged by non-officials. Well, if you think that untrained non-officials are quite competent to discharge such functions, I do not know how you can think that persons of high education and ability like our Deputy Magistrates will not be able to discharge such elementary functions. I submit, Sir, that Mr. Bose went altogether out of his way when he disparaged the officers of the Administrative Department. I would only add, that this clause should remain as it is. Moreover, this clause does not say that judicial officers should be excluded. Dr. Sen Gupta has already pointed out that, if possible, Government will always try to find officers with judicial experience on the civil side for this purpose. There is no doubt about that. But as it will not probably be always practicable to get as many officers of the Judicial Department

on the civil side as may be necessary, it would be only practical common-sense to leave the clause as it stands, so that Government may be in a position to appoint persons other than judicial officers as Chairmen according to necessity. I, therefore, oppose the amendment of my friend Mr. S. M. Bose.

Babu JATINDRA NATH BASU: Mr. President, Sir, I rise to support the amendment of my friend Mr. S. M. Bose. I should like to draw the attention of the last speaker as well as that of this House to the wording of the amendment. The amendment that is sought to be introduced does not require that in all cases the Chairmen of the Boards should be judicial officers of five years' experience of administering civil justice. It is only to certain specified cases mentioned in clause 7 of the Bill that his amendment refers, and my friends ought to know that clause 7 incidentally refers to other clauses, viz., 9, 13, 19, 20 and 21, where the question not only of settlement of debts but also of joint liability and various other important things is dealt with. There may also be a question of partnership. The State, Sir, has always been very particular as to the way in which these questions should be dealt with, and that is why the question of partnership has been taken away even from the jurisdiction of the Small Cause Courts in order that there may be a proper consideration of the question by the Ordinary Civil Courts. I say, therefore, that, having regard to the special nature of the cases that are referred to in clause 7, the persons who preside over the Boards when these matters are brought to them for decision should be persons who can bring to the consideration of the questions a knowledge of judicial principles and an experience of dealing with matters of the description mentioned in clause 7. In ordinary matters, where there is only the question of debt and the amount for which that debt should be settled and the question of instalments are concerned, it may be done by any other agency, but to allow everybody, who is not trained in the administration of civil law, to decide questions of joint ownership, partnership, and other questions, would be introducing an innovation which would not lead to the proper administration of justice.

Dr. NARESH CHANDRA SEN GUPTA: Sir, may I first of all enquire on a point of order, whether, if this motion is lost, amendment No. 163, which is sought to be made a proviso to clause 7, will be ruled out? Sir, my submission is this. No. 163 required a person to have had such judicial experience as might be prescribed by rules made under this Act. In the present amendment a special kind of judicial experience is referred to, but experience of 5 years, etc., is not at all mentioned in this amendment, viz., No. 163.

Mr. PRESIDENT: Is it your contention that amendment No. 163 is wider in scope?

Dr. NARESH CHANDRA SEN GUPTA: Yes, Sir.

Mr. PRESIDENT: Anyhow, you will not be adversely affected. Even if the present motion is thrown out, No. 163 will stand.

Dr. NARESH CHANDRA SEN GUPTA: Sir, with regard to this clause, as I have been saying, we have been quarrelling over a matter about which there is no difference of opinion. I have submitted before that I support the principle that Chairmen of the compulsory Boards should be judicial officers, and the Hon'ble Member himself has also assured us that it is the idea of the Government that, so far as is possible, these persons should be judicial officers. The question now narrows down to this: whether a provision to that effect, viz., that they should be judicial officers, should be incorporated in the Bill, or whether it should be left to the discretion of the Government. I might just say that I am in favour of such a provision being made in the Bill itself, because the Government of to-day might not continue to be the Government of to-morrow and the understanding given by the Hon'ble Member to-day may not be honoured by his successor to-morrow. For this reason, I should like to have a provision of this sort, in a very mild form if you like, as in amendment No. 163, viz., that he should be a person who has had such judicial experience as may be prescribed by rules made under this Act, rather than that a provision of this description should be left out altogether.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I have already explained the difficulty of Government in accepting the amendment of Mr. S. M. Bose. There is one point only which he has made a great deal of and which, I think, I should explain to you. He has drawn the attention of the House to the proviso to clause 4 and said that Government have accepted judicial officers in that particular clause. The explanation is very simple. It was suggested that it was possible for Government to dissolve a Board and appoint an officer to carry on the work of that Board, and, therefore, to assure them although there was no reason for such assurance—that it was clearly not possible for Government to do so, but just to create a sort of automatic check, we accepted this proviso, which means that it will not be possible for Government to dissolve the Board and act through any Government officer. The number of Boards will be so great that once we accept the principle that only judicial officers will be able to give an award, then we create an automatic check on the procedure suggested by some members; and in view of that we accepted the amendment about judicial experience being necessary for an officer who will take the place of the Board. But there is another thing also which I should like to make clear. I must say that Mr. Bose has no personal

knowledge of what is taking place in Chandpur and that it is pure hearsay that he has treated the House to. On the other hand, we have got a report from one of the members of this House—Mr. Sachse—who went to Chandpur, examined the records, and made his report to Government; this report shows how excellent the work is that is being done there and how it has been, practically or entirely, by means of mutual agreement between the debtor and the creditor that the settlements are being arrived at. Sir, it is no good citing one or two cases and then condemning the whole show at Chandpur. There may have been cases where a *mahajan* has gone back on his word, but there is no doubt that the operations of the Board at Chandpur have brought about a much better relation between the debtors and the creditors than what existed before. As regards the statistics of crimes, I might say that the facts and figures show that they have gone down very much. Besides that, Sir, anybody who knows what was the condition in Chandpur before the appointment of these Boards knows that the *mahajans* were in great danger of their houses and properties being looted; there was the Krishak Samity preaching no-rent campaign. All these have now gone and what is more the Co-operative Societies have been able to make better collections this year than they had done before

Sir, I fully agree with what Dr. Sen Gupta has said We do contemplate the appointment of judicial officers as far as possible and when amendment No. 163 comes up we may consider whether something on the lines suggested by Dr Sen Gupta can be done—that ordinarily officers with judicial experience will be appointed. It is obvious that Government do not want to appoint men who will not inspire the confidence of either the debtors or the creditors, and if the appellate officers make a mess of things, the blame will fall on Government. The Chairmen will not be for the creditor or the debtor. Therefore, it is obvious that the right type of men will be appointed as Chairmen of such Boards which will have these compulsory powers. With these words, I oppose the amendment of Mr S. M. Bose.

Mr. S. M. Bose's amendment was then put and lost.

The question that clause 3 stand part of the Bill was put and agreed to.

Clause 4.

The Hon'ble Khwaja Sir NAZIMUDDIN: I beg to move, that for the proviso to clause 4 the following be substituted, namely:—

"Provided that if, when a Board is dissolved, the Local Government does not consider the appointment of another Board to be necessary or desirable, it may authorise any officer who has had judicial experience to exercise such of the powers of the Board

in connection with the making of awards as it may specify and the Collector to exercise all or any of the other powers of the Board."

Sir, this is purely a drafting amendment.

The amendment was then put and agreed to.

The question that clause 4, as amended, stand part of the Bill was put and agreed to.

Clause 5.

Babu JATINDRA NATH BASU: I beg to move that clause 5 be omitted.

Sir, clause 5 gives power to the Local Government to delegate the powers under clauses 3 and 4 to the Commissioner. Clause 3 deals with the establishment of Debt Settlement Boards, and clause 4 deals with the cancellation of the appointment of Chairmen or any other members of the Board. The Boards which will be set up will be practically judicial authorities whose orders and awards will have to be carried out as such. It has been very properly provided in the Bill that the appointment should be made by the Local Government; but that provision is sought to be modified by clause 5 which seeks to give the Local Government power to delegate its authority for the appointment and removal of Chairmen and members to the Commissioner. In such small matters as the appointment of Commissioners of Municipalities and the nomination of Commissioners and the removal of Chairmen and Commissioners, in which the cases are very much numerous than those contemplated under this Bill, it is the Local Government and not the Commissioners of Divisions that exercise the authority. There does not appear to be any reason why when the sphere of work is similar, the Local Government should cease to exercise the authority and delegate its power to another. The Local Government will command much greater confidence than the Commissioners of Divisions. The Local Government will probably have the views of the Collectors and Commissioners and others whom they may choose to consult regarding the appointment of Chairmen and members and their removal. In matters like these, the Local Government should be the final authority and there should be no delegation of its powers, as such delegation does not take place in the appointment of nominated Commissioners of Municipalities and the removal of Chairmen and Commissioners. This power is kept by Government in its hands and there is no delegation to any other authority.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I think Mr. Basu was not in the House when I mentioned the fact that we contemplate

appointing something like two thousand Boards in the province. Your municipalities number about 125, whereas we shall have two thousand Boards. It is not possible for Government to deal with all the cases relating to this large number of Boards and it will mean enormous delay if all cases regarding the nomination of all members of the Boards have to be referred to the Local Government. Therefore, I think that there should be power in the hands of Government wherever they think that it will expedite the business of debt settlement to delegate the authority to the Commissioner of the Division. I do not see what possible objection there can be in delegating these powers to the Commissioners who will probably know the people who are being appointed personally and in most cases will have the advantage of personal consultation with the District Magistrates and will thus be in a far better position to express an opinion on the composition of the Boards than the Member or Minister who will be sitting in Calcutta. I therefore oppose the amendment.

The amendment was put and lost.

The question that clause 5 stand part of the Bill was then put and agreed to.

Clause 6.

The question that clause 6 stand part of the Bill was put and agreed to.

Clause 7

Mr. SARAT KUMAR ROY: Sir, with your permission, I wish to amend my amendment a little. In line 2 of the amendment, after the words, brackets and figure "Sub-section (*1*)," the brackets and letter "(*c*)" be inserted. May I have your permission to do so?

Mr. PRESIDENT: Yes, you have my permission to do so.

Mr. SARAT KUMAR ROY: Then, Sir, my amendment will run thus:—

"Provided that the Local Government shall not empower any Board to exercise all or any of such powers under sub-section (*1*) (*c*) of section 19, or under section 20 of this Act, unless a recommendation is made for that purpose by the Bengal Legislative Council after five years from the passing of this Act."

Sir, the powers under sub-section (*1*) (*c*) of section 19 or under section 20 of this Act are unquestionably extraordinary. They have come as a surprise to the money-lenders of this province. A year ago, they hardly ever dreamt of a legislation like this. The exercise of such extraordinary powers will upset their contractual relations established under the existing laws of the country. Moreover, the people of this

province had hardly got any opportunity to examine the implications of this Bill in detail; far less to take precautions against those provisions which seek to introduce compulsion in the settlement of debts.

In the next place, Sir, I may draw the attention of the House to the fact that in the other provinces of India, where similar legislations like this have been already enacted, compulsion was not introduced at the inception. Sir, I think that is a sound principle and we should adopt it. We should first make it optional between the parties. When we shall find that such efforts have failed, we may introduce compulsion. For this purpose, I suggest that the Local Government shall refrain from exercising the powers under section 7 until five years expire from the passing of this Act; and that thereafter actions should be taken only if the legislature, after reviewing the result of the operation of this Act for the first five years, recommends to the Government for investing the Boards with these extraordinary powers. These are the reasons for my amendment.

Mr. ANANDA MOHAN PODDAR: Sir, I beg to support the amendment moved by my friend Mr. Sarat Kumar Roy.

The Boards should not be empowered, at the very beginning, with the drastic powers of compulsion under section 19 (*1*) (*b*) and (*c*) or section 20.

Under section 19 (*1*) (*b*) and (*c*) the Board is empowered to make an award in such cases in which the parties do not agree. In section 20 also the power of granting the certificate contemplates compulsion

The purpose of the Bill can be adequately served if at the first instance the Board is empowered to make awards under section 19 (*1*) (*a*) in which voluntary settlement is provided for. As a practical measure this should be taken up first and sufficient trial should be given to this procedure. If the method of voluntary settlement proves a success, then there will be no necessity to introduce compulsion as contemplated under sections 19(*1*) (*b*) and (*c*) or section 20 or section 21 If on the other hand, after a period of fair trial, it is found that the voluntary scheme is not working well, a milder form of compulsion as contemplated in section 19(*1*) (*b*) can be introduced

I am always against the drastic provision of granting the certificate under section 20. This section gives the Board power without restriction. It is to some extent a penal clause. It prevents the creditor, in case he does not agree to the terms of the debtor, to realise the cost of the suit, the interest at more than 6 per cent. per annum and the execution of a civil decree for a period up to 10 years. There is ample provision to bind the non-agreeing creditors under clause 19 and so this clause is quite uncalled for. It should never be introduced, if introduced at all, at the initial stage.

This House should be given an opportunity to study the working of the Act after a certain period. Let us, therefore, first of all see how the voluntary system works and if necessary we shall then be in a position to introduce compulsion.

We have been told that in Chandpur the process of operation has been to effect voluntary settlement between the parties and we are given to understand that the process has been a great success there. Though we have great misgivings as to the process and the result achieved at Chandpur, we are prepared to believe that much could be done elsewhere on the voluntary basis. If the experiments at Chandpur had been attended with real success, then it is quite reasonable that trial should be given on similar lines in other places as well. On the other hand, if compulsion is introduced at the initial stage, there is every likelihood of such powers being abused and the very object of the Bill frustrated. The Board being empowered under section 20 to grant certificates, I am afraid it will never hesitate to use it against a creditor who is for some reason or other unable to agree to the terms of the debtor. The debtor is then in an advantageous position; he can assume an uncompromising attitude knowing very well that if the creditor disagrees, the certificate will be issued against him. As soon as the certificate is issued, the creditor is debarred from getting any cost if he goes to the Civil Court, nor would he get any interest above 6 per cent from the date of certificate; what is more he will not be able to realise his dues within a period up to ten years.

It is never safe nor prudent to establish Boards with powers of so sweeping nature at the initial stage. What we want is that the voluntary scheme should be given a fair trial and after a certain period the legislature should be given an opportunity to examine how the voluntary scheme has worked and then, if necessary, some powers of compulsion should be introduced.

Dr. NARESH CHANDRA SEN GUPTA: If I had an opportunity I would like to move a motion which should be just a reverse of this. Instead of saying that Government may authorise five years hence a Board, I would suggest that Government should authorise one Board at least in each district with compulsory powers. My friend Mr. Poddar has given very lucid reasons why a compulsory Board should be started at once. He has said that if the compulsory Board is started, the creditors will be coerced and that is precisely the reasons why compulsory Boards ought to exist. I quite appreciate the argument that the process of agreement should be tried first of all before compulsion is used. But if there are no compulsory Boards which will operate in that area where a voluntary Board is trying to conciliate the debts, it would be hard to bring the creditors down to reason because he has no reason to fear, if he did not agree, something worse might happen.

The most reasonable proposals are likely to be turned down just as much as Mr. Poddar knows that a debtor will be turning down reasonable proposals in the expectation of getting a certificate from the Board under section 20. We may take it that these compulsory Boards, when they are constituted, will not be in a hurry to give a certificate under section 20 (*c*) unless they are satisfied of the entire reasonableness of the proposal made to the creditors. That being so, if the fear of certificates being issued by the Board on the reasonable proposals made by the debtor are refused by the creditor, if that fear causes the creditors to fight shy of all these compulsory Boards, I think this is precisely the reason why the compulsory Boards should exist. My idea is that there should be a larger number of voluntary Boards operating in small areas all over the province and at once there should be a compulsory Board for each area, no matter how large that area is. I suppose when negotiations fail such matters will come to the compulsory Board, that is just the way to arrive at a settlement to reduce either party to a reasonable frame of mind. Without that much good will not be achieved. Mr. Poddar seems to have suddenly acquired a great love for the great work that has been done at Chandpur. I do not know and I have no personal knowledge what has been done in Chandpur or whether it has been good work or bad work. But I know this that the number of cases which have been dealt with by the Board at Chandpur could bear no proportion to the total number of debts which may have to be decided. A very small number of cases have been adjusted in a manner which may be regarded as satisfactory, and what we are attempting to do is not to settle a few debts and to rest content with that, but to settle all debts where settlement is necessary, and for that purpose it is absolutely essential that there should be, behind the earnest endeavours for a compromise to be made by the voluntary Board, the sanction of a possibility of a compulsory Board coming in and intervening in the matter. I would have that possibility considered from the start and for that reason I think the Boards should be started everywhere.

May I point out another difficulty? If that is not done, suppose an application is made before a voluntary Board and it is disposed of one way or the other, or it is dismissed because the parties cannot agree, I take it that under the provisions of the Bill as it stands, no further application for the adjustment of the settlement would be possible and the establishment of a compulsory Board in that area would not help persons whose applications have been so dismissed. Therefore, it is necessary that when such a contingency happens and that parties cannot agree, there ought to be a body to which that application may be sent instead of being dismissed outright.

Then, Sir, there is another apprehension. If there is no compulsory Board upon which the debtor can rely, there is always the risk that the debtor would be compelled to consent to terms which are beyond his

means. The pressure of the *mahajan*, who is standing out against all reasonable proposals, will perhaps induce the debtor to accept very small reductions utterly unreasonable and utterly beyond the competence of the debtor to pay. Such a settlement will not help him. The debtor will not be able to pay his dues and under section 25 after that he will be sold out at once. Therefore, I want that this assurance that if agreement fails the matter may be compulsorily adjusted should be available to the debtor from the very start and it should not be postponed for a day longer than necessary.

The Hon'ble Khwaja Sir NAZIMUDDIN: I do not think there is anything more for me to add to what Dr. Sen Gupta has said. I think I may be wrong. But Mr. Sarat Kumar Roy was anxious that this Bill should be of a temporary nature and its life restricted to 5 to 7 years Here we find that it is contemplated that the Board should carry on and then should start dealing with these compulsory arbitrations after five years I think it is very difficult to reconcile these two attitudes of his. My opinion is that we have to appoint simultaneously these compulsory Boards covering a very large area and would have the ordinary Boards in small areas and, as Dr. Sen Gupta has said, where the debtors and creditors have not been able to come to a compromise, their cases may be referred to the compulsory Boards. Therefore, I do not think that this is a practical proposal. Therefore I oppose the motion.

The amendment was put and lost.

Babu HEM CHANDRA ROY CHOUDHURI: I beg to move that after clause 7 the following proviso be added, namely:—

"Provided that the Chairman of the Board so empowered shall be a person who has had such judicial experience as may be prescribed by rules made under this Act."

Sir, this clause 7 contemplates that some of the Boards should exercise more important powers, *viz.*, the power of compulsion, and should also adjudicate in cases of insolvents. The number of these Boards will not be so great as that of ordinary Boards. We have heard from the Hon'ble Member that there will be about 2,000 ordinary Boards, but the number of specially empowered Boards will be few because these Boards would be established for a larger area. It is, therefore, necessary that the Chairman of such a Board should be a responsible man having judicial experience and the number of these Boards being not large, the Government will have no difficulty in getting such qualified men for Chairmanship. My amendment leaves a very great scope for Government to select the Chairman. My amendment wants that the judicial qualifications of the Chairman will be prescribed by the rules made under this Act by Government; then also my

amendment does not impose restriction that the Chairman should be a judicial officer. The Chairman should be only a person who has some judicial experience. This includes even retired officers not only on the civil side but also on the criminal side. My amendment does not say that judicial experience will be on the civil side only. It means judicial experience on the criminal side also. Then I think there will be no difficulty for Government to select Chairmen for these Boards. This point has already been discussed on the floor of this House, and I think there is an overwhelming opinion in this House for providing these specially empowered Boards with Chairmen having some judicial experience. If Government have any respect for the opinion of this House, I think they should accept this proposal. Those who are of my opinion want that such a safeguard against abuse of the power given to the Board should be provided. This Board will deal with transactions between debtors and creditors, and there is every likelihood that corruption may creep into the members of the Board; they want safeguards to be provided against corruption and if I remember correctly Mr. Poddar while supporting a motion or when moving his own motion said that if these Boards were constituted in the villages there was a chance of the members of the Boards being influenced by party factions in villages. I think this apprehension is not at all groundless. So some protection must be provided for against that and if the Chairmen of the Boards which will have special power are responsible persons having judicial experience, we may avoid that apprehension. With these words I move my amendment.

Dr. NARESH CHANDRA SEN GUPTA: To make this amendment more acceptable to the House may I move a short-notice amendment to the following effect:—

"Provided that the Chairman of the Board so empowered shall be ordinarily a person who has had such judicial experience as may be prescribed by rules made under this Act."

I understood from the Hon'ble Member that he was prepared to consider an amendment in this form.

The Hon'ble Khwaja Sir NAZIMUDDIN: May I just explain the position of Government?

Mr. W. H. THOMPSON: On a point of order, Sir. These Boards are to be appointed by Government itself. I can understand Government making rules for the guidance of its officers, but surely it is not right to prescribe in an Act that Government shall make rules for its own guidance. In that case, is the amendment in order at all?

Mr. PRESIDENT: The amendment is in order, but whether the Government should do it or not it is for them to decide.

The Hon'ble Khwaja Sir NAZIMUDDIN: May I explain my difficulty? I was certainly attracted by the wording suggested by Dr. Sen Gupta—"shall be ordinarily," but we have been considering the thing during this time and we apprehend that it would leave a loophole that whenever a man who has not got judicial experience is appointed people may run up to a Court and say there is no justification for this appointment as there are judicial officers available and why are they not appointed. That is one point. But there is another point which makes it difficult for me to accept the amendment as proposed. We have got no idea as to the number of these Boards with special powers. The Board of Economic Enquiry who had gone very carefully into this question and had thorough statistics prepared from the materials they collected said that they expected to have 2,000 Boards at least with ordinary powers. Supposing we accept Dr. Sen Gupta's scheme as he contemplates it, we must have at least one Board with special powers covering a certain number of Boards with ordinary powers so that cases from the ordinary Boards which cannot be compromised may go up to the compulsory Boards. If I accept the scheme as visualised by Dr. Sen Gupta or a scheme somewhat on those lines, then it is possible that we may have to appoint 20 per cent. of 2,000 Boards having compulsory powers. It means that we will have 400 Boards. And if we have 400 Boards with compulsory powers we will have to appoint as many persons with judicial experience as Chairmen and it is just possible that we may not have such a number of men available or the question of cost may come in. All this may delay the working of the Board and giving effect to the Act. As I said before, every attempt will be made to have persons with judicial experience as Chairmen of these Boards, especially the Boards with powers to impose the provisions of section 21, but there must be some elasticity and Government ought to be trusted to see that suitable persons are appointed as Chairmen of these Boards. I very much regret that I cannot accept this amendment of Dr. Sen Gupta, although it looks so reasonable and plausible, as I apprehend that we may find ourselves in difficulty and later on may have to postpone the whole Act, and we may have to come up for the amendment of the Act. In view of this, I regret I cannot accept the amendment.

Dr. NARESH CHANDRA SEN GUPTA: In that case I beg leave to withdraw my short-notice amendment.

The amendment was then, by leave of the Council, withdrawn.

The amendment of Babu Hem Chandra Roy Choudhuri was then put and lost.

The question that clause 7 stand part of the Bill was put and agreed to.

Clause 9.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that in clause 9 (*1*), in line 4, for the words "he ordinarily resides," the words "the debt was contracted" be substituted.

My amendment is with regard to the jurisdiction. The Civil Procedure Code provides that jurisdiction is created not only by the residence but also by the place where the contract was made. In the case of money suits the jurisdiction is created by the place where the contract was made and also by the place where the defendant ordinarily resides. But in the present Bill it has been restricted only by one standard, *i.e.*, the place within which he ordinarily resides. A contract is generally made in a place where both the creditor and the debtor reside, but if after a contract is made the debtor removes himself to another district which may be far away and begins to reside ordinarily for the purpose of trade or commerce or for any other purpose, in that case he will be entitled to file an application before a Board in that district and in that locality. The result will be that the creditor will be at a great disadvantage, he being not in that area but far away. He will be either dragged to that place or in many cases proper notice will not be served on him with regard to the application which has been made at the place of the ordinary residence of the debtor. When the Act comes into operation, the creditor as well as the debtor will have to be vigilant because any application made by the debtor will have to be taken note of by the creditor who must have to go to the Board and file any document (otherwise there are penal clauses for not filing the documents in time) he may possess. The creditor will suffer great disadvantages in such cases, so I would substitute the words "the debt was contracted" for the words "he ordinarily resides." This will obviate the difficulties which might arise if the provision in the Bill stands as it is. For this reason I have suggested my amendment and commend it for the acceptance of the House.

Dr. NARESH CHANDRA SEN GUPTA: I should be willing to support this amendment if my friend instead of substituting the words had put that in as an alternative provision. I think there is something to be said for having an alternative provision—"Or where the debt was contracted." I am thinking particularly of the cultivators of my district—Mymensingh. Supposing a cultivator of Mymensingh has contracted debts for which he might make an application under this section and then chooses to migrate to Dhubri or any other part of Assam (they often do it), the effect of that will be that he will make an application (because they have no similar law in Assam) in a place where the debt was contracted. For that reason I shall be very glad to support the amendment if it is framed in the way I have suggested.

Babu SATISH CHANDRA RAY CHOWDHURY: I accept this amendment.

Dr. NARESH CHANDRA SEN GUPTA: I beg leave to move a short-notice amendment.

Mr. PRESIDENT: Would you do that to-morrow? Order, order. The Council stands adjourned till 2 p.m. on Tuesday, the 3rd December, 1935.

Adjournment.

The Council was then adjourned till 2 p.m. on Tuesday, the 3rd December, 1935, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Tuesday, the 3rd December, 1935, at 2 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHOWDHURY, of Santosh) in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers and 88 nominated and elected members.

GOVERNMENT BUSINESS

LEGISLATIVE BUSINESS

GOVERNMENT BILLS.

The Bengal Agricultural Debtors Bill, 1935.

(Discussion on the Bengal Agricultural Debtors Bill, 1935, was resumed.)

Short-notice amendment.

Dr. NARESH CHANDRA SEN-GUPTA: Sir, I beg to move that after the words "he ordinarily resides" the following be added, namely:—

"or the debt was contracted."

The Hon'ble Khwaja Sir NAZIMUDDIN: May I just have time, Sir, to think it over?

Mr. PRESIDENT: Then, you want me to leave it out for the present?

The Hon'ble Khwaja Sir NAZIMUDDIN: Yes, Sir.

Mr. PRESIDENT: In that case, I better proceed with the other amendments.

[The motion was subsequently withdrawn.]

Maulvi SYED MAJID BAKSH: I beg to move that to clause 9 (*1*), the following be added, namely:—

"or if no Board has been established for that local area to a Board nearest to his usual place of residence."

This will exactly mean what Dr. Sen Gupta has in mind, viz., that when a debtor residing in, say, the district of Mymensingh, contracts a debt and then goes to live within the jurisdiction of Assam, he should not be debarred from applying to any Board because there is no such measure in Assam. Sir, if my amendment is accepted, it will be possible for the debtor to come to any district in Bengal close to his usual place of residence to make an application. As regards the point raised by Dr. Sen Gupta, I am not inclined to accept the words "debts contracted" because debts contracted must be in a place over which a Board must have jurisdiction. I hope the Hon'ble Member will be pleased to accept my amendment.

Babu SATISH CHANDRA RAY CHOWDHURY: Sir, I oppose the amendment moved by Dr. Sen Gupta. I have already stated my grounds for changing the Bill clause where a debt has been contracted——

Mr. PRESIDENT: The discussion on that question has been postponed for the present.

Babu SATISH CHANDRA RAY CHOWDHURY: I am sorry, Sir.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I would like to oppose the amendment of Mr. Syed Majid Baksh. It practically means that Government should have simultaneously all over Bengal Boards established; otherwise, it may lead to a tremendous amount of confusion. Suppose, there is a Board in Chittagong, and suppose, there is some area in the Dacca district which is nearer to Chittagong than Dacca; in that case, the Dacca people will have to go to Chittagong. It is difficult to decide whether the nearest Board to an applicant's usual place of residence is also the most convenient place. I feel that it will not be convenient, and that it will lead to practical difficulties. We must

have all applications before one Board, and that is the Board where the man usually resides. An objection can be taken to the question, which is the nearest Board, when there are two Boards equidistant from a particular place. No useful purpose will be served by accepting this amendment; rather, it will stop the agitation to have Boards established more quickly. Instead of creating a stumbling block, it is much better to provide for all places. I would, therefore, request Mr. Syed Majid Baksh to withdraw his amendment; otherwise, I must oppose it.

The amendment was put and lost.

Mr. W. H. THOMPSON: Sir, I beg to move that to clause 9 (*1*) the following be added, namely:—

"within five years from the date of the first establishment of a Board for the local area."

I move this, Sir, as a last attempt to get Government to accept the addition of something in the Bill somewhere to show that it is not to last for ever. In moving it, Sir, I need not repeat the arguments which Mr. Wordsworth put forward the other day, but I would assure you, again Sir, and assure this House, that the European Group is not opposed to the object of this Bill in any way. We believe in the Chandpur experiment and in the success of the Chandpur experiment, and we are looking forward to a very good deal of good being done by these Boards as soon as they are appointed. We believe that in the first flush of enthusiasm these Boards will do an immense amount of good; but, Sir, I know enough of human nature—and Bengali human nature is the same as other human natures—I know enough of human nature to know that the first flush of enthusiasm will not go on for ever. I know, Sir, that after a time, these Boards will get slack, and some of them may even get up to tricks, and I know, Sir, that the best of these Boards after a time will be so surrounded by touts and self-seekers that they will lose the confidence of the people, and as soon as they will lose the confidence of the people, they will do no more good, and should be abolished. Government may say that this is a matter which should be left to be dealt with by executive action, but we in this House, in framing legislation, should frame it so that it is a guide to executive action. The Hon'ble Member will, I hope, go as far as to give us an assurance that such action will be taken, and that as soon as the Board is seen by inspecting officers to be losing the confidence of the people, the Board will be shut down. He will see, Sir, from the vacant benches around me, that I have not whipped up the European Group to vote against the Government on this amendment, but I do ask the Hon'ble Member in all seriousness to consider the suggestion which I have made.

Maulvi ABUL QUASEM: Sir, the Hon'ble Member in charge of this Bill has already made it clear that Government has no intention of allowing any debtor to go twice before the Board in respect of his debts, but that only once he will be allowed to have resort to the Board. Still, Mr. Thompson thinks that a time-limit—a definite arithmetical figure—should be given so that executive action may be controlled, so that the Board may not be able to continue beyond a particular length of time. Even, I think, Sir, Mr. Thompson's own arguments are enough to show that no such provision is needed. Mr. Thompson says that in the first flush of enthusiasm, the Board is expected to do some good, and then when the first flush is gone, the Board will get tired, lethargy will overtake it, the public will be losing confidence in it, and Government will have to shut it down. If such a thing happens, the Board will be automatically abolished, and there would be no need for Government to issue an executive order to that effect. If the people in a locality do not wish to take its aid that will be the shortest and the easiest way to end a Board, no time limit is necessary and the provision in the Bill that a debtor shall not be allowed to approach the Board more than once—would bring it automatically to a close when its existence would no longer be required.

Babu JATINDRA NATH BASU: Sir, I support the amendment moved by Mr. Thompson. I do not think there is any such apprehension about the acceptance of this amendment as that to which expression has been given by Mr. Abul Quasem. For some reason or other, all sections of the House are agreed that the measure must be a temporary measure. It is a temporary measure for amongst other reasons that we are passing through a time of economic stress, and that so long as that stress continues, there must be some relief for agricultural indebtedness. Now, Sir, a period of five years is a sufficiently long period for such a special measure to continue. It may be that the depression may continue after that period. If that happens, all that would be necessary would be to have an amending Act providing that the measure be extended by a further period. The intention of the present measure is that if it is ascertained that there is indebtedness in a particular area, which requires, under the provisions of this Act, the establishment of a Board, then a Board will be established there, and the Board will receive applications both from debtors and creditors for adjustment of debts. But, Sir, if the Board is to be allowed to remain operative as regards receiving new applications for a longer time than five years, then it would happen that a Board would continue for a very great length of time, and that whenever a debtor found himself in debt, he might come before the Board and get its help. It has been pointed out, Sir, that the debtor can come before a Board only

once for the settlement of his debts, but when a debtor dies, his representatives—each one of them, sons, daughters and the widow—may come before the Board at any time, thus prolonging the life of the Board *ad infinitum*. What is necessary, therefore, is that there should be some check as to the period of time during which the Board should operate. If it was intended that the Board should be a permanent feature of our economic life, then the Bill ought to have been recast on an entirely different basis, and not framed as at present. The Bill, as now framed, aims at relief of agricultural indebtedness for a definite space of time, and all the provisions that have been inserted are intended for the purpose of administering such relief. But if there is no such provision as in the amendment just moved by Mr. Thompson, it will mean that the intention is that the Bill should be operative for all time, when debtors may come before Boards even after ten or fifteen years hence. If the 2,000 Boards, to which the Hon'ble Member has referred, are not abolished by an order of Government, they will continue for a much greater length of time than anybody in this Council has ever thought of. The fact is that it is a measure for temporary relief, and that the only thing to be considered therefore, is, what should be the period of time during which its operation should continue so that new applications may be received till then. If the time suggested in the amendment, that is to say, five years from the date of establishment of a Board in a particular locality, is accepted, that I submit, Sir, to this House is quite a sufficient time for the people to tide over their temporary economic difficulties. On the contrary, if it becomes a permanent feature of our legislation, it will cause innumerable difficulties, and it will to some extent disturb the economic arrangement about financing of agricultural operations. With these words, Sir, I support the amendment.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I may remind the House that at the time of considering the amendments which proposed to restrict the life of this Act to five or seven years, it was suggested that Government might consider the question of acceptance of an amendment something on the lines proposed by Mr. Thompson. Then, I promised that we would consider the question when the time would come. Sir, we have gone into this question fully, and Government are willing to accept the amendment moved by Mr. Thompson, and the reasons are that it has been admitted by practically all sections of the House that this Bill is to be of a temporary nature. When one admits that this is to be of a temporary nature, and when everything that has been proposed has been done so as to make sure that it is to be a temporary Bill without in any way affecting the smooth working of the Act, there can be no objection whatsoever to the amendment now proposed being accepted. What I mean to say is that by emphasizing the temporary nature of this Bill, we do not want, in any way, to hinder

the smooth working of the Act. What has been proposed in this amendment is that after the first establishment of the Board, people can go to it and put in their applications up to five years, which means that if the people of the locality do not come forward within five years with a claim for settlement of their debts, then they do not deserve to have their cases considered any further. Sir, five years is an ample time not only for the people to make up their minds about the settlement of their debts, but it is also an ample time to come forward and to put in their applications. No one, I submit, can be at any disadvantage whatsoever by accepting this amendment and by incorporating it in the Bill, because ample opportunities have been provided for coming and filling an application before the Board. This amendment is intended to emphasize the temporary nature of this Bill, and you may remain practically certain that so far as applications are concerned, no application will be accepted after five years from the establishment of the Board. The Act will certainly continue to operate, and the Boards may continue to operate for a number of years more, but a Board will not be entitled to receive fresh applications after five years from the date of the first establishment of the Board.

As regards the point raised by Mr. Thompson that when a Board has lost the confidence of the public of the locality, Government should have power to dissolve it. It can be made quite clear, Sir, that from the very beginning we have reserved power in our hands that if a Board loses the confidence of the public, we shall certainly abolish that Board, and we have also kept powers, if necessary, to appoint another Board in its place. With your permission, Sir, I intend to move another amendment which will be something like a consequential amendment to the one that has been moved by Mr. Thompson and in which it will be made clear that this restriction of five years will not apply to any application before a compulsory Board. Once a man has made an application before a Board,—supposing that the Board had not the power to take action under clauses 19, 20 or 21, and that the application had either been dismissed or kept pending,—in that case when a new Board will be established, it will not have power to deal with it even after the acceptance of this amendment. In that case, the five-year rule will not operate. When the Board has been established it will have the power to deal with these cases and if a debtor makes an application within five years this five-year rule will not operate in his case. It has been done in carrying out the idea that the Bill is of a temporary nature. Those people who will come in, their cases only will be considered in every possible way, but we would not allow any new people to come in after five years.

I would with your permission move an amendment to clause 9 (*1*).

Mr. PRESIDENT: What is that?

The Hon'ble Khwaja Sir NAZIMUDDIN: The Legislative Department has drafted the amendment, and I would like to read it out to Mr. Thompson, so that he might tell us if he would accept it. It runs as follows:—

That to sub-clause (*1*) of clause 9, the following be added, namely:—

"within five years after the first Board is established under sub-section (*1*) of section 3 for that local area."

Mr. W. H. THOMPSON: I would accept it.

Mr. PRESIDENT: It would be taken up later.

Maulvi SYED MAJID BAKSH: Sir, one aspect of the matter, I think, has not been looked into. The essence of all laws of limitation is that it is likely to become too rigid. For that reason, Sir, there is jurisdiction invested in Courts in India and elsewhere by the Limitation Act that the Board which will take cognisance of the Law of Limitation ought to have the power to allow some more time in order to suit the exigencies of the case. Section 5 of the Indian Limitation Act provides for various suits, appeals and other things an extension of time. If for some reason it is found that a man was unavoidably prevented from coming within the period of limitation, the authority which administers the Law of Limitation has got jurisdiction to extend the period in order to suit the exigencies of the case. Here, Sir, if you prescribe a period of limitation for persons appearing before a Board for filing their first application and if for some reason or other the man is late by a day or two, under the ordinary laws of limitation he may be given some time. But you are going to make the section too rigid. So, my suggestion is that too rigid a period of limitation should not be provided and some provision may be made investing the Board to extend the period in certain cases; otherwise, this will be a defective legislation, and I have pointed out that this amendment has got this defect.

Dr. NARESH CHANDRA SEN GUPTA: Sir, I am afraid my friend Mr. Majid Baksh forgets that the period of limitation that is suggested is five years from the establishment of the Board. It is a pretty long period during which a debtor or a creditor, as the case may be, can make his application. That being so, there is no occasion for further extension of time. Mr. Majid Baksh knows that under the Indian Limitation Act it is not in every case that time is allowed. There is jurisdiction under section 5 of the Limitation Act to extend the period in some cases. There are also other sections of the Limitation Act in which, for instance, in the case of disability or in the case of a party

wanting to pursue another remedy in another Court, the period is automatically excluded, but there will be no occasion for such rules when five years is stipulated as the period during which applications can be made. It must be remembered, Sir, that this Bill is contemplated to lighten the burden of debt which is now pressing heavily upon the debtors and not for other debts. We want to get rid of the enormous burden of debts *at present*. If at present a debtor is unable to pay his debts in the ordinary way, then there is necessity for a Board. We must not encourage debts incurred six or seven years hence to go before a Board. That is not what the Bill intends to do. For the purpose of disposing of the present indebtedness five years' time within which a person can apply before a Board is nothing but adequate. When he makes the application within this period, there is no limitation.

Maulvi SYED MAJID BAKSH: A debtor might make a mistake in calculation.

Dr. NARESH CHANDRA SEN GUPTA: If through a mistake a person does not apply even before the last day of the fifth year, then he has got to suffer.

Mr. S. M. BOSE: Sir, in supporting the amended amendment, may I just call the attention of the Hon'ble Member in charge to sub-clause (*3*) where a similar amendment should also be made?

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Sir, the rigid limitation of five years does not seem to be enough to solve the problem. Suppose a debtor dies leaving behind many minor children. If you say that as soon as the period of five years would elapse from the date of establishment of any Board, no new case will come up, what will happen to meet a case like that? Supposing a debtor believing that he has five years granted to him within which he can take advantage of this Bill waits and dies in the meantime, leaving behind many minor children and a widow, and if you say that after five years no application will be entertained, then it is to be remembered that the minor children are not competent persons to appear before any Board to have any relief whatsoever; then what will be the fate of these minor children, if after they become major they have to apply for relief. Do you want to deny such minor children of a debtor of all the advantages under the Act when the Board is existing? If the Board is abolished, then the thing is quite different. I want to know how the case of a person who is incapacitated by law to appear before any Court will be decided if this amendment is accepted by Government. I leave the matter, however, in the hands of the Hon'ble Member in charge.

Rai Bahadur JOGESH CHANDRA SEN: Mr. President, Sir, the Hon'ble Member in charge certainly deserves our thanks for very wisely accepting this amended amendment of Mr. Thompson. He has done it in order to ease a serious situation. We can safely assume that as soon as this Bill is passed, people will come forward in the course of two or three years to adjust their accounts and if they fail to do, then the presumption will be that they do not want to adjust their accounts. So, the period of five years is quite sufficient to meet the purpose.

Mr. H. P. V. TOWNEND: Sir, may I just say two words in reply to the objections raised?

The first objection is that the period of five years is too short and too rigid a period to be applied satisfactorily in practice. Now, against that I would point to results in the Central Provinces where there are Boards actually working: I saw a report recently in the papers to the effect that the Boards established in certain places had nearly finished their work and that the Government is thinking of removing them to other districts. It is proposed to abolish the Boards now in certain places because they have nearly finished their work. As you will remember, Sir, the Central Provinces Act was passed only in 1933; so in the Central Provinces they think that, within two years, the Boards have practically exhausted the work in the districts for which they were created. Five years, therefore, should be ample.

The next argument, raised by Nawab Musharruf Hosain, is that this provision will be very hard on the minor orphans of a debtor who will not be able to apply. This argument seems to go much too far. Why should we think only of the minor orphans of a debtor who dies during the five years period? What about the children of those debtors who get their debts settled under this Act and die after 15 or 20 years? Applications by them would not be "further applications" and subclause (7) would not prevent their applying about their newly incurred debts. There would be a possibility that this Act would again be brought into force, and a new Board created, to settle the debts of the next generation. If that possibility existed, creditors would be very chary of lending money during this period—especially towards the end of the period—and we would find that credit would be restricted.

Sir, these are the only two arguments which have been advanced against this amendment and neither has any force. I think the House will agree that for all practical purposes this provision will not hinder work under this Act if it is passed into law.

Mr. PRESIDENT: Are minors restricted from appearing before a Board?

Mr. H. P. V. TOWNEND: The Nawab's idea is that these minors will not appear until they attain their majority in 21 years; but there is nothing to prevent their guardians from appearing now on their behalf.

Mr. PRESIDENT: The procedure that I would like to adopt in this case is to ask the Council to allow Mr. Thompson to withdraw his amendment first and then to treat the amendment of the Hon'ble Member in charge as an independent amendment.

The Hon'ble Khwaja Sir NAZIMUDDIN: I would prefer Mr. Thompson's amendment with only the verbal alteration I suggest.

Mr. PRESIDENT: The original amendment has got to be withdrawn. Then Mr. Thompson may, if he likes, adopt as his own the amendment suggested by the Hon'ble Member in charge.

Mr. W. H. THOMPSON: I would like to accept the Hon'ble Member's suggestion—an amendment of my amendment.

Mr. PRESIDENT: The two amendments cannot be made into one. One must make room for the other. The one suggested by Government is complete by itself. Will you ask leave of the House to withdraw your amendment and then adopt the other as your own, so that I may put it to the House?

The original amendment of Mr. W. H. Thompson was withdrawn by leave of the House.

The Hon'ble Khwaja Sir Nazimuddin's amendment was put and agreed to.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that after clause 9 (*1*), the following proviso be added, namely:—

"Provided that no board shall entertain an application for settlement of a debt in which any of the members of the board is personally interested either as creditor or debtor directly or indirectly and that such application if made shall be forwarded to the Appellate Officer who will dispose the same or make it over to any other board for disposal."

It transpired during the debate so far that all are anxious to see that the Boards acquire popularity, and that their utility may not be lost on account of any partiality, actual or supposed, which may come out during the working of the Board. All I want to say here is that if my earlier motion that the members of the Board should be elected from

outside the group of debtors and creditors had been accepted, in that case there would have been no need for moving this. But as we know Government may have in some cases to appoint some people who might be debtors or creditors themselves, it is necessary that there should be some safeguard so that debtors may not be judges in their own causes. Unless there is some such provision it will be very difficult to mend matters, when it will transpire that a man has practically been a Judge either in his own case either as debtor or creditor or, in which he is connected either directly or indirectly. Of course, there is a provision later on that an application may be made to an Appellate Officer who may transfer a case from one jurisdiction to another, but that will come too late. The mischief ought not to be allowed to be done if possible, and then rectified by an appeal to the Appellate Officer. It may not be within the reach of everybody to go to an Appellate Officer on matters like this. There should be a hard rule of law enjoining on the Board that they should not entertain applications from persons who are themselves debtors and also members of the Board or their close relations as the case may be. In that case, mischief may be avoided and some confidence may then be placed on the Board. I think the motion carries its own recommendation, and I cannot say any more.

Babu HEM CHANDRA ROY CHOUDHURI: I think Mr. Ray Chowdhury is labouring under a misapprehension that this objection to the transfer of a case from one Board to another can only be made by way of appeal. But this is not so. I will draw the attention of Mr. Ray Chowdhury to clause 34A which provides that "whenever it is made to appear to the Appellate Officer that for ends of justice it is expedient to transfer an application made under section 9 from one Board to another, the Appellate Officer may order that the application be transferred to such other Board as may be specified in the order ....." Hence at the very first opportunity, a debtor or a creditor may apply to the Appellate Officer for transfer of such an objection. He may not have to wait for the disposal of the case and then apply to the Appellate Officer by way of appeal for transfer, but at the very first opportunity he may apply to the Appellate Officer for transfer. The scope of clause 34A, which provides grounds for transfer, I think is wider than that proposed by Mr. Ray Chowdhury. Mr. Ray Chowdhury says that in cases where any member of a Board is personally interested either as a creditor or a debtor, directly or indirectly, such an application, if made, shall be forwarded to the Appellate Officer who will dispose the same..... But under clause 34A wherever it is found that for the ends of justice the transfer should be made, then the creditor or debtor will have the right to apply to the Appellate Officer for such transfer. "For the sake of the ends of justice" the ground of transfer mentioned in clause 34A covers more ground than that mentioned by Satish Babu.

The Hon'ble Khwaja Sir NAZIMUDDIN: I think Mr. Roy Choudhuri has explained very lucidly that there is already provision to safeguard any apprehension that may exist in the mind of Babu Satish Chandra Ray Chowdhury. Besides, his amendment is very vague as worded, and it is possible to debar from sitting on the Board or entertaining applications a large number of local people who may be directly or indirectly interested in one of the applications. A member of the Board or his remote relations may be interested, therefore it will not be possible to put in an application. We can always safeguard these cases by framing rules wherever necessary. In view of the provisions of clause 34A, I do not think any apprehension need exist, and I therefore oppose this motion.

The amendment was put and lost.

Mr. PRESIDENT: I think we can now take up amendment No. 165, if the Hon'ble Member is ready to deal with it. Its consideration was postponed at his request.

The Hon'ble Khwaja Sir NAZIMUDDIN: I very much regret that I still find difficulty in accepting this, because there is a possibility of creditors filing their applications first in the subdivisional headquarters, or places where they live, and it may then happen that the debtors may have to go to a place where an application has been filed by the creditor. That is the possibility which one cannot ignore. Then there is always going to be a complication, and a debtor may file a petition in one place and the creditor in another place. Therefore, I think it is better to make this thing as simple as possible and have all the applications before one Court or one Board at one place, namely, where the debtor or creditor resides. In view of the above, I regret I cannot accept either of these amendments.

The amendments of Babu Satis Chandra Ray Chowdhury and Dr. Naresh Chandra Sen Gupta were put and lost.

Mr. ANANDA MOHAN PODDAR: I beg to move that in clause 9 (3), the following be added, namely:—

"or to a Board established for the local area within which he ordinarily resides."

Sir, under clause 9 (1) the debtor has been allowed to apply to the Board for the local area within which he ordinarily resides, but under sub-clause (3) of this section 9, though a creditor has been allowed to apply, in that case he has been asked to do so in the jurisdiction of his debtor, but it is certainly against equity and justice, I may say, that when a creditor is an applicant he must be allowed to apply within the

jurisdiction of his own area. I do not grudge at all a debtor getting his own jurisdiction, but in a case where the creditor is the applicant, he must apply in his own jurisdiction, and I hope the Hon'ble Member will not grudge this small facility given to the creditor.

Dr. NARESH CHANDRA SEN GUPTA: The Hon'ble Member has referred to equity and justice. I beileve some rules regarding equity and justice are provided in the Civil Procedure Code, and the Code does not allow a plaintiff to sue where he ordinarily resides. He must sue in the place where the defendant ordinarily resides except where the cause of action arises elsewhere. That is equity and justice.

Babu SATISH CHANDRA RAY CHOWDHURY: Instead of giving my full support to the mover here, all I want to say is that we find the principle in the clause is quite the reverse altogether of the principle and procedure laid down in the Civil Procedure Code. There the plaintiff is the creditor himself, he may apply at the place where the contract was made or where the defendant or the debtor ordinarily resides. Here, Sir, the applicant is the debtor, so there ought to be shown some consideration to the position of creditors also. The principles of the Civil Procedure Code do not apply strictly speaking——

Mr. PRESIDENT: Can you apply them to section 9 (*1*)? Can it make any improvement in the position of the creditor?

Babu SATISH CHANDRA RAY CHOWDHURY: Yes, by substituting "the place of contract" for the words "ordinarily resides." Here in the case of the debtor he must apply in the place where he ordinarily resides. It may be that he may contract the debt in one place and subsequently may remove himself to some other place. There may be contingencies as spoken of by Dr. Sen Gupta where the debtor himself will suffer if the Bill clause remains as it is. In a Civil Court where usually the creditor is the plaintiff may file his suit in a Court under which either the cause of action arose or the defendant the debtor resides. Here the creditor has no choice; he must follow the debtor wherever he may choose to be. He may go anywhere, thousands of miles away; he must follow the debtor. The argument that we should have the application of the same principle as in the Civil Procedure Code does not, therefore, apply at all. I submit that the principle is not the same here. I only point out to this House that Dr. Sen Gupta's contentions and his analogy are not correct. I do not support the amendment, however, for the obvious reason that it narrows the jurisdiction unduly.

The Hon'ble Khwaja Sir NAZIMUDDIN: It is curious that even a supporter of this amendment could not support the amendment. I think the whole object of this Bill is to have the debts settled in the villages, but if we accept the amendment, it is possible that a creditor who resides in a town or in any other place may file his application at a place very distant from where the debtor lives. Then, again, it is much better that one man should go to a particular place than that a large number of people be forced to go to a particular place. I am sorry I must oppose this amendment.

The amendment was then put and lost.

Dr. NARESH CHANDRA SEN GUPTA: At this stage may I have your leave to move a short-notice amendment of which I gave notice on the 27th November, 1935.

Mr. PRESIDENT: Why do you call it a short-notice amendment? Was that disallowed?

Dr. NARESH CHANDRA SEN GUPTA: No, Sir, it was not disallowed.

Mr. PRESIDENT: All right, you may move it.

Dr. NARESH CHANDRA SEN GUPTA: I beg to move that sub-clauses (*3*) and (*4*) of clause 9 be omitted.

Sub-clause (*3*) says that unless the debtor has already made an application under sub-section (*1*) any of his creditors may make an application to a Board to which the debtor might have applied under that sub-section.

Sub-clause (*4*) says that if applications are made (by creditors) to more than one Board in respect of the debts of the same debtor, such applications shall (in accordance with), subject to rules made under this Act, be transferred to and dealt with by one Board.

So far as these are concerned, they give the right to the creditors to apply. If you look at clause 13 (*3*) you will find that where a creditor applies and a notice is given to the debtor to put in his own case, if the debtor fails to comply with the notice under sub-section (1), the Board shall dismiss the application, that is to say, if a debtor does not file his statement of debts, the Board shall dismiss the application of the creditor and may allow such costs as the Board consider reasonable. The right which is given to the creditor is altogether illusory. He can only apply if the debtor co-operates with him, but if the debtor simply

stands aside and refuses to put in his statement of debts, the creditor cannot proceed further. Having regard to that, I think it would be a kindness to the creditor if you take away the right that we propose to give him under clause 9 (*3*). Apart from that, there are other reasons why the creditor should not be given the right to apply. The object of this Bill is primarily to relieve the debtors who have a burden which they are not able to discharge. Suppose a debtor does not think that he has enough to discharge that burden, suppose a debtor does not think that it would be proper for him to take advantage of these Boards, what purpose can there be in giving the creditor that right? Absolutely none. If as a matter of fact the debtor is not willing and the creditor files his application, the debtor may not come forward with a statement of debts and thus prevent his application being heard under section 13. The simplest thing would be for the debtor to apply. It is to his interest to have his debts reduced and instalments fixed, but he may do nothing of the sort. On the other hand, the creditor has no occasion to go to the Board; he may go to the Civil Court and get his decree. It is to the interest of the debtor to apply, but if he does not apply, the creditors have no right to take him to the Board. In any event, section 13 makes this privilege, if it is a privilege at all, altogether illusory. I think sub-clauses (*3*) and (*4*) should be omitted.

Babu SATISH CHANDRA RAY CHOWDHURY: Sir, I beg to oppose this amendment for the simple reason that Dr. Sen Gupta wants to do the thing all the other way. What we want by clause 13 is to mete out equal justice to both parties. Instead of amending section 13 (*3*), Dr. Sen Gupta wants that both the clauses (*3*) and (*4*) be dropped altogether so that the powers of the Board may be restricted. The necessity for the creditor going to a Board may arise in this way. The debtor will, I believe, not readily come before a Board; he will probably wait and watch and there may be cases when the creditor will have to go to a Civil Court. Then the debtor may come forward and file an application to the Board just to check the creditor's suit, and the Civil Court will not be able to deal with the case. That will be a sort of creating a suspense and in order to avoid that suspense the creditor may also come before the Board and have the thing finished. I think Dr. Sen Gupta ought not to have given his wholehearted support to this Bill. This Bill will not be an unmixed evil for the creditor. In the execution stage it will be an advantage to the creditor, but the disadvantage will be up to the time of the award because the principal may be reduced and there may be a certain amount of uncertainty as to the amount to which it may be reduced. Once an award is passed, the subsequent stages will be easier than in the Civil Courts because in the Civil Court the trouble begins with the execution, *i.e.*, after the decree is passed. Here when the award is once passed, it will be easier

for the creditor. That is why I consider that the Bill is not an altogether unmixed evil to the creditor. The point is whether we should shut out the remedy from the creditor which is given to the debtor. Whether we should prevent the creditor from setting the law in motion, that is the question. If the principal is applied to all the cases, then clause 13 shall be so amended as to bring the debtor and creditor to the same level, so that both may take advantage of the provisions of this Act. Instead of that, Dr. Sen Gupta proposes to drop sub-clauses (*3*) and (*4*) of clause 9 and also to drop clause 13 (*3*). I think this amendment ought not to be accepted by the House.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: I believe Dr. Sen Gupta is not right when he says that if this clause stands as it is, it will not benefit the creditor at all. We all believe that if it remains as it is, it will give some relief to the creditor also. There are many creditors nowadays who cannot come to a Civil Court for want of necessary cash. Necessarily the creditor will like to have relief from these Boards rather than from the Civil Court. So I believe that in 99 cases out of 100 the debtors also will prefer to appear before a Board which has been constituted for the benefit of the debtor principally and even in one case if he does not appear due to his own foolishness before a Board, the creditor is not debarred from going to a Civil Court and get his relief. If this stands, I believe, in the natural course of events, it will help the creditor whose money is practically in the hands of his debtor and who has no money with him to sue his debtors. In the circumstances, it would help those people who have no money at their disposal to spend in order to get back the money lent because in the Boards they will not have to pay any court-fee or incur any other expense. When Dr. Sen Gupta says that this provision should be abolished, I do not know for whom he is speaking.

Kazi EMDADUL HOQUE: He is speaking for the debtors.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: If he is speaking for the debtor alone, he may be right, but he cannot take the plea for the creditors and say that the creditor will be benefited if a right like this is taken away from him. I would ask him to withdraw his amendment and leave the section as it is.

The Hon'ble Khwaja Sir NAZIMUDDIN: I must oppose this amendment. Apart from the fact, as pointed out by previous speakers, that there is a positive advantage for the creditor in having this right of putting in an application, I cannot conceive of any case which would be of advantage to the debtor also if the creditor is not allowed to apply. Suppose there is more than one creditor and a particular

creditor is a man of great influence and the debtor is afraid of putting in an application for other reasons, it may be of advantage to him if another creditor puts in an application. The debtor will then be able to come forward with a statement of his debts for a compromise. In view of this, I oppose this amendment.

The amendment was then put and lost.

Short-notice amendment.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I beg to move that in sub-clause (*6*) of clause 9 before the words "a Board may," in line 1, the words, brackets and figures "notwithstanding anything contained in sub-section (*1*)" and after the words, brackets and figures "in sub-section (*1*) or sub-section (*3*)," in lines 3 and 4, the words "whether such application was made to this or to any other Board" be inserted.

I may explain that it is a purely consequential amendment intended to safeguard the position of those applicants who had made an application before the Board, but that Board not having compulsory powers could not deal with it and therefore they had to make an application to another Board when established which had such compulsory powers, so that they do not come within the 5-year rule. That is all.

Sir, I also beg to move that in clause 9(*6*), last line, after the word and figures "section 13," the words, brackets, letter and figure "clause (*c*) of sub-section (*1*)" be inserted.

This is a purely verbal amendment, and therefore I need not make any speech.

Dr. NARESH CHANDRA SEN GUPTA: Sir, while on this clause I wish to point out that the Hon'ble Member has tried to improve the drafting so that applications may be made to the compulsory Boards in case a voluntary Board has failed to dispose of applications.

I also wish to draw his attention to the fact that the drafting may also be improved by specifically stating that in other cases applications shall not be entertained. That is most necessary. "A Board may for good and sufficient reason entertain a further application in respect of any debt incurred before the date of a first application under sub-section (*1*) or sub-section (*3*) except when such application under either of the said sub-sections has been dismissed under sub-section (*3*) of section 13 or sub-section (*2*) of section 17." The form in which it has been put, viz., in the form of an exception, implies rather than expressly states the inability or the incapacity of a Board to entertain applications.

The short-notice amendment of the Hon'ble Member was put and agreed to.

Maulvi SYED MAJID BAKSH: Sir, in connection with amendment No. 174, last line, may I know to which clause the "sub-section (*1*)" relates?

Mr. PRESIDENT: What is your difficulty?

Maulvi SYED MAJID BAKSH: My difficulty is that here no section is mentioned, but simply sub-section (*1*) is mentioned.

Mr. H. P. V. TOWNEND: May I explain that these words should be read with the context? In that case the hon'ble member will see that the words "or clause (*c*) of sub-section (*1*)" come before the words "or sub-section (*2*) of section 17," so they will refer to section 17.

The amendment was then put and agreed to.

Maulvi SYED MAJID BAKSH: Sir, I beg to move that clause 9(*7*) be omitted.

Sir, I make no secret of the fact that I do not like that a debtor should be given only one chance of making an application to a Board considering the kind of debtors we have got to deal with—illiterate and half-literate; I think, therefore, that some latitude should be given to the Board to receive such applications. By a previous amendment to sub-section (*1*) you have restricted the power of the Board to receive applications not beyond five years. If within these five years it is found that a debtor has left out some of his debts, he will not be allowed to appear before the Board again. I do not hold that view. There should not be any bar to his doing so; rather a fresh bar may be created. The first bar imposed by an amendment of the Hon'ble Member in sub-section (*1*) is a sufficient check, and to impose a further check at this stage is superfluous. Therefore, I think, that sub-section 9 (*7*) should be omitted. A debtor should, in my opinion, be given latitude to appear before a Board within five years more than once. A limit has already been fixed, and I do not think that a further limit is necessary.

Mr. SARAT KUMAR ROY: Sir, I rise to oppose this motion. It has to be admitted that this legislation, the object of which is to help the debtors out of their indebtedness, ought not to contain any provision which would encourage them in incurring debts again and again. After being relieved once, he should remember always that he cannot get concession again if he becomes involved. This sub-clause (*7*) of clause 9 is intended to guard against any such encouragement, and its omission would certainly mean providing in the Bill for such encouragement as would have the evil effect of making him lazy, improvident, and irresponsible.

Sir, if the cultivators of the province desire to thrive, and if such desire is sincere, their first and foremost aim should be to become industrious and economical. The Administration Report of the Government of Bengal which has been just published, shows at its pages xxxvi and xxxviii that they are not quite so now. This piece of legislation should contain, I think, express provision for directing their attention to these drawbacks on their part, and it should contain such provision as would train them up to habits of industry and economy; it should not embody anything which would have the opposite effect upon them. So, Sir, I think the debtors must cease making unproductive loans, and if they do not do so, the law must debar them from enjoying any benefit of this Act. For these reasons, I think, this sub-clause ought not to be omitted. I, therefore, oppose this motion.

Dr. NARESH CHANDRA SEN GUPTA: Sir, I oppose the amendment. It is absolutely essential that we should draw a line in regard to the debts as they exist at present. With regard to clause 9 I would draw the attention of the Hon'ble Member to a great anomaly that has crept in. The clause says: "A Board shall not entertain any further application for the settlement of any debt which has been incurred by a debtor (including any rent which has become due) after the date of application under sub-section (*1*) or sub-section (*3*)." Now, if you look back to clause 2(*8*) (*iii*), you will find that you have excluded from the definition of "debt" any rent not due at the time when a Board determines the amount of debts under section 18, so that a debt which becomes due up to the date of its determination under section 18 becomes a debt which can be adjusted by a Board; that is to say, a rent which has become due after the application but before the determination of the debt under section 18 can be adjusted by a Board, but clause 9(*7*) excludes the possibility of the inclusion of that rent. So, how is that rent going to be adjusted? I think there are only two ways of dealing with this difficulty; either to go back to clause 2(*8*) and amend it so as to say "any rent not due at the time when the application under 9 (*1*) is made" or to amend clause 9 (*7*), omitting the words and brackets (including any rent which has become due), or better still to expressly put down "any rent which has become due after the application but before the date of settlement under section 18 may be made the object of further application." Otherwise, any rent which becomes due between these two dates is left, more or less, floating in the air.

Babu HEM CHANDRA ROY CHOUDHURI: Sir, in my opinion, Dr. Sen Gupta is not correct when he says that owing to the provision of clause 9 (7) a Board cannot take into consideration rent which has become due after the date of application up to the date of the determination of a debt. What this clause provides is that the Board shall

not entertain any further application for such debts, but it does not provide that the rent which has become due after the date of application and up to the date of the determination of a debt will not be considered by a Board. When a debtor makes an application to a Board, it will be open to that Board to take into consideration the rent which has become due after the date of application up to the date of determination. So, I think the provision in the Bill is quite in order.

Mr. H. P. V. TOWNEND: Sir, Dr. Sen Gupta would like to substitute "the date when the Board determines the debt under section 18" for "the date of application." But there is always the possibility that the amount of a debt will not be determined at all as has been pointed out by Dr. Sen Gupta himself, though in another connection. I am not accepting the view which he then put forward: What I mean is that it is quite possible for an application to be dismissed, for some reason or other, before the time came when the Board determined the amount of the debt. I do not personally think that there is much need to put this provision about rent in this sub-section, but certain members of the Select Committee—I do not think it a breach of confidence to mention this—were very nervous about the whole matter, and they wanted a provision about rent to be included so as to be on the safe side. There is no harm in keeping it in because the Board can include in the award any rent which has fallen due up to the date of determination of the amount of the debt without a further application. This is provided for in the Bill. There is no harm done in keeping the provision and if it is left out, many people will be alarmed. As regards the main amendment that we should omit the clause altogether, I think there are fairly good reasons for its retention. Government, therefore, oppose the amendment.

The amendment was put and lost.

The question that clause 9 as amended stand part of the Bill was put and agreed to.

Clause 9A.

Babu HEM CHANDRA ROY CHOUDHURI: I beg to move that clause 9A(*1*)(*a*) be omitted.

Sir, clause 9A(*1*)(*a*) provides that in case of an ancestral debt for which two or more persons are jointly liable if one of such persons is a debtor within the meaning of this Act, and they all join in making such application, then they will get relief under thia Act. The main principle of the Bill as embodied in the preamble is to provide relief to the agriculturist debtor, but an exception has been made by providing this sub-clause. In the case of an ancestral debt, whether that ancestor was an agriculturist or not and where two or more persons

are his heirs, then if one of these heirs be an agriculturist, the other heirs, though they are not agriculturists, will be entitled to get relief under this Act. The reason for this which was advanced by the Hon'ble Member when he moved for taking this Bill into consideration was that the properties or assets inherited by these debtors are joint and owing to the jointness of property liable for the debts relief has been extended to those holders of share of such property, who are not agriculturists. It has been provided in some clause that this relief will be granted only to those debtors who are not able to pay their debts, and I think this is the pivot on which the Bill rests. This clause extends relief not only to those who are not agriculturists but even to those who are able to pay. If it is found necessary that relief should be given to an agriculturist heir, he may come under clause 9A(2), that is, the debt may be reduced with respect to his liability and others left alone. There seems to be no reason for inserting this clause, especially because the personal property of an agriculturist will not be liable for the debt of his ancestor.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, this question was discussed at very great length in the Select Committee and practically it was unanimously agreed that this was a case where protection should be given to the heirs who have inherited a debt and where one of the applicants is a *bona fide* agriculturist according to the definition in this Bill and the others happen to be non-agriculturists, but the property that is involved is agricultural land and it is for the protection of agricultural land that this clause has been inserted quite irrespective of the fact whether the ancestor was an agriculturist or not. This Bill is really intended to protect the agriculturists and agricultural lands, and the protection here is given to both. Therefore, I oppose this amendment.

The amendment was then put and lost.

Babu HEM CHANDRA ROY CHOUDHURI: I beg to move that in clause 9A(*1*)(*a*), in line 1, for the words "an ancestral debt" the words "a debt incurred by an ancestor who was a debtor within the meaning of this Act and" be substituted.

Sir, the effect of this amendment, if accepted, will be that relief will be granted only in the case of those ancestral debts which have been incurred by an agriculturist. I have already given my reasons why I am not in favour of extending relief under this Act in respect to those debts which have been incurred by a non-agriculturist, and the Hon'ble Member in charge has said in replying to my previous amendment that the Bill is intended to give relief to agriculturists. I am also in favour of giving relief in respect of only those debts which have been incurred by an agriculturist and not by others. If my amendment is accepted, that purpose would be served.

Maulvi ABUL QUASEM: Sir, I rise to oppose the amendment moved by Babu Hem Chandra Roy Choudhuri. He is anxious not to give relief in respect of debts incurred by non-agriculturists. The criterion to judge by is to see who has got the present liability to discharge a debt. If the person who is now obliged to discharge the debt is an agriculturist, he should be granted relief. We need not look to the origin of the debt. We have got to see whose is the present liability to pay. If he is a debtor within the meaning of this Act, there seems no reason why this Act should not be extended to him for his relief. A person who is not a debtor within the meaning of this Act cannot be allowed to have recourse to this particular section. If he is a debtor and his primary means of livelihood is agriculture, then he can come under the protection of this Bill, not otherwise. Supposing his ancestor was a non-agriculturist, but if he is a *bona fide* agriculturist, then he is entitled to get relief under this Act. The argument that because the debt was contracted by a person who was not an agriculturist, his heir who is an agriculturist and who is liable to discharge the debt should not be entitled to get relief under this Act, has no legs to stand on. In his speech, while speaking on his previous amendment, my friend made the observation that a particular person is liable to discharge an inherited debt only to the extent of the property he has inherited from his ancestor. But the Bill makes a clear provision in clause 11 that every applicant debtor has got to make a declaration that he is unable to pay off his debts. If he is able to discharge his debts out of the property, then he will not be given any relief; only when he can satisfy the board that the property which has come to him is insufficient to discharge his liability, he will be granted relief, otherwise, not. I, therefore, oppose the amendment.

Maulvi SYED MAJID BAKSH: It seems, Sir, that our sense of justice is getting perverted. When does a non-agriculturist become an agriculturist? If a rich man loses all his properties, his children finding no other means of livelihood, become agriculturists. My friend's contention seems to be that the more a man gets poorer, the more he must pay. If the sons of a non-agriculturist become agriculturists, they do so out of sheer necessity and cannot pay their ancestral debts. But should they be made to pay all the debts and not allowed any relief because their father happened to be a very rich man, although they did not inherit any of the riches of the so-called rich father. I therefore think that this amendment is rather out of place.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, in view of the observations made by Maulvi Abul Quasem and Maulvi Syed Majid Baksh I have nothing further to add. This question was discussed and decided in the Select Committee. Government must oppose the amendment.

The amendment was then put and lost.

Babu PREMHARI BARMA: Sir, I beg to move that in clause 9A(*1*)(*a*), in line 3, after the words "they all" the words "or some of them" be inserted.

Sir, the clause 9A(*1*)(*a*) provides that in case of ancestral debts when two or more persons are jointly liable and if one of them is a debtor within the meaning of this Act, then if such a debtor is to get any relief under this Act, he must make other co-debtors who are not debtors within the meaning of this Act, agree to jointly apply to the Board. If all of them do not agree, the real sufferer will not get any relief. Sir, if for example, there are four brothers who are jointly liable for an ancestral debt and if three of them are not debtors within the meaning of this Act and who are in a solvent position, it is but natural that these three will not agree to apply as in that case they will have to submit a list of all their movable and immovable properties which will be under the control of the Board and there may be other reasons as, for example, the brothers may not be on cordial terms and hence they may not agree to apply jointly. For these and other similar reasons, I commend my motion to the acceptance of the House.

Mr. H. P. V. TOWNEND: I am afraid that Government has to oppose this amendment because it is rather confused. The cases which it seeks to cover come under clause 9A(*2*) which deals with applications where all the joint debtors do not join in making the application. The object of sub-clause 9A(*1*)(*a*) is to protect the land of the cultivator from sale for family joint debts. If the joint debtors are not joint in anything else, the property would not be sold for the debt of the persons jointly liable. But if the persons jointly liable belong to a joint family, the property or part of it could be put up for sale if there were a suit against any of the persons jointly liable. Thus the object of the clause would be defeated if we allowed partial applications only to be made. It is necessary to be consistent. If all the family applies, clause (*1*) will come in; if one debtor alone applies, clause (*2*) will come in. That is a logical arrangement. The other proposal is not logical and will cut across the scheme of the Bill.

The amendment was put and lost.

The Hon'ble Khwaja Sir NAZIMUDDIN: I beg to move that in clause 9A(*1*)(*b*), line 2, for the words "if every such person is a debtor" the words "if all such persons are debtors" be substituted.

It is a drafting amendment.

The amendment was put and agreed to.

Maulvi ABUL QUASEM: I beg to move that in clause 9A(*1*)(*b*), line 4, the word "or" be added after the word "application" and the following be inserted thereafter, namely:—

"(c) a debt for which two or more persons are jointly liable as principal debtor and surety, respectively, if every principal debtor is a debtor within the meaning of this Act and all the principal debtors join in making such application."

Sir, I must at the outset very frankly express my disappointment at the compromise which Government thought fit to make in the Select Committee in agreeing to this provision—I mean the provision embodied in clause 9A (2). I think, Sir, this sub-clause embodies a rule of great unfairness and injustice. I wish to make my meaning clear. In respect of this amendment you might remember that I moved a motion, namely, motion No. 111, where I sought to define two terms which I have used in this amendment of mine, namely, the terms, "principal debtor" and "surety," and I sought to attach to them the same meaning as they bear in the Indian Contract Act. It would be convenient, Sir, if I just tell the House what the meaning of these terms are in the Indian Contract Act. It is laid down in section 126.—

"A 'contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called the 'principal debtor,' and the person to whom the guarantee is given is called the 'creditor.' A guarantee may be either oral or written."

Sir, it will at once be apparent that the surety, who is interested only in helping this third person and who has no personal interest in the debt befriended the principal debtor at a time of need to get a loan. The principal debtor required a loan and the surety helped him to get the loan. What the section 9A (2) suggests is that you should throw the surety to the wolves. He is not the principal debtor. Sir, this is an enormity—I use the word advisedly—which no person, no fair-minded person, can support. I would ask whether the House would consent to the provision which is embodied in clause 9A (2). The idea is that the principal debtor alone should be given relief under this Act, and if his debt is scaled down, he will pay only the reduced amount and for the remainder of the debt, his surety will continue to be liable to the creditor and the creditor will be allowed to realise the amount from the surety. Under the law if the surety is compelled to pay on account of the principal debtor, he is relegated to the position of a creditor; he can have all the remedies open under the law to a creditor. Here the debtor is being given a discharge so far as his liability is concerned; he is being given complete absolution; he will never be called upon to pay again so far as this debt is concerned. But the poor man, the surety, who came to help him at a time of great emergency and need, is deliberately thrown to the wolves; he will be fleeced and he will have no remedy. I would ask: Is this justice and equity? Here

we are deliberately going to penalise a man who ought to deserve as much sympathy and support as the debtor himself. The debtor now is your object of pity and sympathy. Why should sympathy be shown to him to the exclusion of the surety who helped him in his need? You are going to penalise him because he showed sympathy to the man to whom you are now showing sympathy. Is that logic, I ask? Sir, of all the compromises, I regret to have to tell this House which Government has thought fit to make, this is the one compromise which goes against the grain, which goes against all principles of fairness and justice. I would submit that Government will be well advised if they seriously consider accepting my amendment either in this form or in any other form acceptable to them, keeping intact the substance of my motion. There is no reason why a surety should be allowed to be fleeced when you are giving relief to the debtor who alone benefited by the loan. The surety did not derive any benefit out of the loan; he only did a good turn to the man in distress. But when you are scaling down a debt, so far as the debtor is concerned, and are drawing a distinction between him and the surety you are in reality not scaling down the debt at all, because the creditor will be left complete liberty to pursue the surety and realise the remainder of his dues. The poor surety will have no remedy against the debtor on whose account he will be made to pay. That is an enormity, I repeat. I have suggested in another amendment, if my present amendment is accepted, that clause 9A (*2*) be deleted altogether. If this is accepted, there will be no need for the existence of clause 9A (*2*).

With these words I commend my motion to the acceptance of the House.

Babu KHETTER MOHAN RAY: Sir, I beg to oppose this amendment of my friend Mr. Abul Quasem which runs as follows, viz., "a debt for which two or more persons are jointly liable as principal debtor and surety respectively, etc." Under the law as it stands the principal debtor and surety are not joint-debtors. They are not jointly liable to the creditors. The law is this: If a debt is not realised at first from the principal debtor, then the creditor is able to realise the debt from the surety. But that does not mean that they are jointly liable to the creditor. Therefore, I say it is not a joint debt for which two or more persons are liable. When the principal debtor and the surety are there, it cannot be called a joint debt. Therefore, I say here this amendment which states "a debt for which two or more persons are jointly liable as principal debtor and surety, respectively," is illegal and *ultra vires*, and there is no such thing as joint liability of the debtor and the surety. Under the law, one is liable and not the other. Unless the principal debtor is exhausted, the creditor cannot proceed against the surety. Therefore, it does not come within clause 9A—"a debt for which two or more persons are jointly liable." Both of them are not liable to the same debt.

Maulvi SYED MAJID BAKSH: Sir, I have got an amendment which includes in some respects the motion of Mr. Abul Quasem. Shall I put it?

Mr. PRESIDENT: Suit yourself.

Maulvi SYED MAJID BAKSH: If you allow me to move it, then I will speak.

Mr. PRESIDENT: Yes, you may.

Maulvi SYED MAJID BAKSH: Sir, I beg to move that after clause 9A(*1*)(*b*), line 4, the word "or" be added after the word "application" and the following be inserted thereafter, namely:—

"(*c*) a debt other than ancestral debt for which two or more persons are jointly liable if one of such persons is a debtor within the meaning of this Act, provided they have lands under their joint cultivation."

Sir, this is a logical consequence of the scheme promulgated in clause 9A. Clause 9A deals with joint debtors within the meaning of this Act. There may be persons who inherit debts jointly; it is not contemplated in clause 9A(*1*) and there may be persons who become themselves joint debtors under sub-clause (*b*). One case has been provided by Mr. Abul Quasem. In that case a man becomes surety for the other man who is a debtor. This section will adversely apply to the surety. I admit that I do not follow the arguments of my friend, the previous speaker, inasmuch as there is no bar in the Civil Procedure Code to a person laying a plaint in the alternative. I do not admit that my friend has not come across such a plaint. There is such a plaint and in the decision made a decree is always given and it may be given if the Judge dismisses the claim against one or the other. But it is within the right of the Judge to decree a claim in the alternative against a joint debtor and surety. My friend Mr. Quasem's contention is that if you allow the debt of a joint debtor to be scaled down and you do not allow the surety to enjoy the benefits thereof, that would do an injustice. The surety had no personal interest in joining hands with the debtors except to facilitate obtaining relief. If he did so, it is rather unjust to allow him to be penalised for having rendered his good service to the debtor. Sir, this Bill involves the scheme contemplated and it involves sacrifice on the part of the creditors for the good of the agricultural debtors. It also involves sacrifice on the part of Government because if suits for them were brought in Court, Government would realise large amount of Court-fees. Government is foregoing them. The creditor is asked

also to forego some claim in being given a fair rate of interest instead of a high rate of interest which, in the circumstances, the debtor cannot pay. But if along with that you say, no matter whether the debt of one joint agriculturist is scaled down or not, the creditor is not going to make any sacrifice because he will be able to realise the entire amount from the surety, you do not follow the scheme of this Act. The creditor is a capitalist and he lends money because it is his business. He may very well show some consideration to the poor surety who rendered his good services at the time of contracting the debt. If you do not touch his skin at all, it is not acting up to the scheme which is behind this Bill. There is no reason why the creditor should not be touched at all. If the debtor does not pay another man must be made to pay because the creditor will not have his pocket touched. The creditor did no good to anyone but himself in lending the money. He has already realised some money as profit; he has lent money it is true, but not invested in fair trade. For interest he depends upon a law which everyone must remember was prohibited earlier in previous centuries, but a few centuries later on it was allowed. Taking of interest was looked down upon even in England and in this and many other countries. It is only when trade flourished in this century and earlier century that the taking of interest as a fair trade was recognised. Since it was a rich country—rich in agricultural products—the creditor found that he could go to any length, leaving only a pittance for the humble debtor to subsist upon. That is the point of view from which I submit that the creditor advanced money. In these circumstances, in these days of depressed condition of business and economic difficulties if you help the creditor to get out of this difficulty about his own transaction and ensure him a fair rate of interest and his principal he will be content. He should not be further allowed to see that if one man escapes the other should not be allowed to escape out of his snare. So far as my amendment is concerned it is logical. You provide in sub-section (*l*) of section 9A that an ancestral debt for which two or more persons are jointly liable and in (*b*) you provide for a debt for which two or more persons are jointly liable and you make the provision that all must join in making an application. But you do not make provision for a case in which a man although he is a debtor and is very poor and cannot pay his debt while the others are rich and may very well pay the debts. In that case if a debtor makes an application before a Board and his other co-sharers who may be very well off do not join in his application, what is the poor debtor to do? You leave him no other alternative but to be tied together with other persons who have money enough. Therefore, this one case must also be provided for in this way that there should be a criterion that if there are joint debtors those who are inhabitants of the town and are well off and the poor debtor who lives on agricultural products and may be in bad circumstances if these persons have one thing common among

themselves, namely, land under their joint cultivation, the poor debtor should be allowed to get relief under this Act whether the others join him or not. Unless you do that, you do him a great injustice. I, therefore, submit to the House that this amendment may very well be made. Some other amendments may be consequential thereafter. I think we should provide against this particular hardship if there are cultivators and debtors one of whom has not been able to improve his position while others have, the former should be dealt with sympathetically and allowed to seek a remedy under this Act. Those who do not need help need not be helped, but they should not be allowed to be an impediment in the way of a poor debtor.

Mr. S. M. BOSE: I oppose both the amendments (Nos. 188 and 189). The fundamental basis of this Act is that agricultural debtors whose main source of living is agriculture should be given relief. It has been said over and over again here that we shall not extend this Bill to non-agriculturists. That is the settled principle. As regards amendment No. 188, what is the present law? A borrows money and his surety at present may be called upon to pay the full amount of the debt advanced really to A, leaving the surety the remedy to take it out from A under the Act. At present, the surety is liable for the whole amount. A now comes under this Act, and we give relief to him, but why should we alter the present law as regards B, the surety? There is no reason at all for this. We are altering the law in one respect, namely, that non-agriculturists are not liable to the full extent of the debt. By way of exception, we give relief to A who comes under the Act, but is that any reason why we should alter the present law which does not give relief to B? It may be that B is a wealthy man having office in London or in Bombay outside the orbit of this Act. So for these reasons I am opposed to amendment No. 188.

As regards amendment No. 189, it is still more unreasonable if I may say so. It says that where there is a debt other than ancestral debts for which two or more persons are jointly liable and one of such persons is a debtor within the meaning of this Act, provided they have lands under their joint cultivation, those persons would come under this Act. If A, B and C happen to have one common bond of land and A is an agriculturist and B and C are absent co-sharers living in towns; and A, B and C borrowed money for marriage expense or something or other, why should the bond given by A, B and C be not binding on B and C? They are non-agriculturists and live in towns. Why should B and C be allowed to take advantage of this Act as my friend suggests to the detriment of the creditors.

Maulvi SYED MAJID BAKSH: On a point of order, Sir. He is misinterepreting me.

Mr. S. M. BOSE: I hope my friend will not interrupt me. Why should B and C be allowed to——

Maulvi SYED MAJID BAKSH: Sir, I hope you will read the amendment yourself and not allow this misinterpretation.

Mr. S. M. BOSE: I repeat again for the third time that B and C ought not to be allowed to come under this Act. Once a joint debt comes under this Act no suits shall lie with regard to that debt. As regards B and C who do not come under this Act there may be a civil suit. This question of joint debt is a question of utmost intricacy. If I may say so, the Select Committee found it a very difficult task to deal at all satisfactorily with the intricate question of joint debt and they settled on clause 9A as a sort of *viâ media*. I am opposed to any extension of the principle of joint liability under the Act.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: I rise to support the amendment proposed by my friend Maulvi Abul Quasem. In ordinary times and under ordinary circumstances, a man may stand surety for any person believing that when the sources of income of the other person is exhausted, the surety will have to compensate the creditor. But we are creating a fact here: we say that every property of a debtor will not be able to be touched. This is a new venture on the part of the legislature. We are excluding certain properties of a debtor from being sold in execution of any debt, so we should consistently provide that a person who may be aggrieved by our own action should also get some relief. Here the surety says that your legislature have no right to do anything to injure me.

When we say that we are protecting the debtors, we should at the same time be protecting persons who have stood sureties to debtors. How can we as a legislature alter facts and circumstances and not at the same time give equitable relief to a person who will be injured by us? So, I appeal to the Government benches to consider whether we shall be justified in inflicting any loss upon a surety when by our own action and by making an innovation and introducing a new principle and creating a new procedure we are not allowing the debtor to pay off his entire debt. So, I think we are morally bound to make a provision in the Bill that when by our own action we are not allowing a debtor to discharge his entire debt we should not compel a third party to be a loser by reason of our action. I do not know whether I have been able to express myself clearly or not. Repetition sometimes injures a cause, but I believe that the case that has been made out by Mr. Quasem is very, very clear. It is this: what right have we as a legislature to injure a party and do him wrong when the party entered into the contract knowing full well that the entire resources of the debtor will be at the disposal of the creditor first. Sir, my

friend the Hon'ble Sir B. L. Mitter is here. He is a veteran lawyer, and when I appeal to the Hon'ble Member in charge of the Bill I am also appealing to him to consider this aspect of the question: Have we any right to injure a person who, when he entered into the contract, knew full well that the entire resources of the debtor would be at the disposal of the creditor? If that is the case, I suggest that Government should, in their own way, put forward an amendment of their own, if they are unwilling to accept the present one, by which to relieve a party who came forward to help the poor debtor for raising a loan. Please do not penalise an action that came out of one's own heart when he stood as a surety. I hope, Sir, I have been sufficiently clear, and I would appeal to my friends once more to consider my suggestion.

In conclusion, I would repeat that we have absolutely no right to inflict any injury upon a person like the surety. With these few words, Sir, I support the amendment of Maulvi Abul Quasem.

Babu KISHORI MOHAN CHAUDHURI: Sir, I oppose both the amendments. I cannot understand that the real situation has been explained by the mover and the Nawab Sahib. If there are two debtors, one of whom is a surety or a co-debtor, and the principal debtor is not in a position to pay his debts, why should not the creditor be allowed to realize the amount from the person who is in a position to pay. If there is another man who can come in as debtor and can claim relief under the law and the surety has to pay off the debt or a co-debtor who is in a position to pay the debt off, he can come upon the other man either for contribution or for the payment of the entire amount; then it will be the poor debtors turn to take advantage of the law. The law provides for the poor debtor only, but it should not be an engine of oppression for the creditor. In case of a loan the creditor takes some precautions that there should be a surety who may, in case of inability of the debtor to pay, be able to pay. So, why should the creditor lose that opportunity, I cannot understand. The principal borrower will not be the worse for it, because he will be able to take advantage of the relief when his turn will come, in which case he will see that the surety pays the amount and will immediately come upon him and realize the debt. In that case he will be able to file a petition and take relief under the provisions of the law. The very same thing can be said as regards the other amendment when there are two debtors. If one of them is in a position to pay, why should the creditor lose the benefit of that security. Why should he not be allowed to realize his debt from the person who is in a position to pay. It is for persons who are unable to pay their debts for some reason or other, persons who are in distress, that we are enacting this law; but we are not making provision for robbing one for the benefit of

another. The other person's turn will come, when his co-debtor pays his debt. He may sue him and ruin him, so the debtor may then take advantage of the provisions of this law. Because one of the two joint debtors is not in a position to pay a debt, why for that reason the creditor should lose the benefit of realising his dues from the other. Sir, I oppose both the amendments.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, the object of the Bill is to provide relief for agriculturists, and in this connection the question arose what would happen about joint debtors. Ultimately it was decided by the Select Committee to let in two kinds of joint debtors—one who had inherited ancestral property who is an agriculturist, and the other is not. In those cases the Select Committee accepted the principle of including both. So, they will come under this provision of the Bill. There is also another case in which this has been accepted, viz., in clause 9A(*1*), (*a*) and (*b*). Therefore, it is now difficult for Government to allow any other kind of joint debtors to be included. The case of the surety appears to be a very hard one, but the point is that in the ordinary case the surety would have to pay the full amount if the cultivator-debtor was unable to pay. As it is, by allowing the agriculturists to come before the Board for having their debts scaled down, the surety at least gets the advantage of the amount by which the debt is reduced. Suppose the debt is for Rs. 100, and it is scaled down to Rs. 20 for the debtor; that is to say the agriculturist will pay Rs. 20 and the surety will pay only Rs. 80; whereas if the agriculturist could not pay at all and had been sold out by his other creditors, then in that case the surety would have to pay the whole of the hundred rupees. That, Sir, is one aspect of the case.

Secondly, what will happen in actual practice is that the Board will always before allowing things like this make the agriculturist-debtors pay some compensation to the sureties.

Maulvi SYED MAJID BAKSH: But why are you afraid of taxing the creditors?

The Hon'ble Khwaja Sir NAZIMUDDIN: The debts of the creditors can be scaled down. It is extremely difficult to take one type of case and argue. You ask for certain concessions without realizing that if these concessions are made, you would be getting not only that particular type of debtors but also of other types. So you simply do not know where to draw the line. If sureties are protected, then all non-agriculturist joint debtors will have to be brought in, and it is very difficult to restrict the operation of the Bill—especially to the particular hard cases that have been brought up before this Council and before the Select Committee. It would mean that, in giving effect to the suggestion, you would be letting in other classes of debtors as

well. If it was only a question of giving relief to the sureties, it would be different. So, in view of the above, Government must oppose both the amendments—Nos. 188 and 189.

Maulvi Majid Baksh asks why we are afraid of making the creditor reduce the amount of loan, and make some sacrifice in cases of joint debtors. Well, Sir, our principle is that a creditor should make a sacrifice only in case of agriculturists, and not in the case of those who are non-agriculturists. It is not the principle of the Bill, that the creditors should be called upon to make sacrifices in their cases too. Therefore, Government have gone as far as possible, and seeing that in two cases covered by 9A(*f*), (*a*) and (*b*), non-agriculturists have already been brought in, I do not think they can go any further.

The amendment of Maulvi Abul Quasem being put a division was taken with the following result:—

AYES.

Ahmed, Khan Bahadur Maulvi Emadeddin.
Baksh, Maulvi Syed Majid.
Banerji, Mr. P.
Barma, Babu Promhari.
Chowdhury, Maulvi Abdul Ghani.
Chowdhury, Haji Badi Ahmed.
Fazlullah, Maulvi Muhammad.
Hakim, Maulvi Abdul.
Hoque, Kazi Emdadul.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Khan Bahadur Maulvi Hashem Ali.
Khan, Maulvi Yamiruddin.
Quasem, Maulvi Abul.
Rahman, Khan Bahadur A. F. M. Abdur-.
Rahman, Maulvi Azizur.
Ray, Babu Nagendra Narayan.
Rout, Babu Noconi.
Shah, Maulvi Abdul Hamid.
Singha, Babu Kshetra Nath.
Tarafder, Maulvi Hajib Uddin.

NOES.

Bal, Babu Lalit Kumar.
Bazir Uddin, Khan Shaib Maulvi Mohammad.
Bose, Babu Jatindra Nath.
Bose, Mr. S.
Bose, Mr. S. M.
Chaudhuri, Khan Bahadur Maulvi Nafizur Rahman.
Chaudhuri, Dr. Jogendra Chandra.
Chaudhuri, Babu Kishori Mohan.
Cohen, Mr. D. J.
Das, Babu Guruprosad.
Dunlop, Mr. R. W. S.
Faroqui, the Hon'ble Nawab K. G. M., of Ratanpur.
Ferguson, Mr. R. N.
Ghose, Dr. Amulya Ratan.
Gilchrist, Mr. R. N.
Gladding, Mr. B.
Graham, Mr. H.
Haldar, Mr. S. K.
Hoque, the Hon'ble Khan Bahadur M. Azizul.
Hogg, Mr. G. P.
Khan, Maulvi Abi Abdulla.
Maguire, Mr. L. T.
Maiti, Mr. R.
Martin, Mr. G. M.
Mitter, Mr. S. C.
Mitter, the Hon'ble Sir Brojendra Lal.
Mittra, Babu Sarat Chandra.
Mukhopadhaya, Rai Sahib Sarat Chandra.
Nazimuddin, the Hon'ble Khwaja Sir.
Porter, Mr. A. E.
Raheem, Mr. A.
Ray, Babu Khetter Mohan.
Reid, the Hon'ble Mr. R. N.
Rexburgh, Mr. T. J. Y.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Roy, Mr. Sarat Kumar.
Roy Choudhuri, Babu Nem Chandra.
Sachse, Mr. F. A.
Sahana, Rai Bahadur Satya Kinkar.
Sen, Rai Bahadur Akshoy Kumar.
Sinha, Raja Bahadur Bhupendra Narayan, of Nashipur.
Stevens, Mr. H. S. E.
Townsend, Mr. H. P. V.
Walker, Mr. J. E.
Woodhead, the Hon'ble Sir John.

The Ayes being 20 and the Noes 46, the motion was lost.

The amendment of Maulvi Syed Majid Baksh was put and lost.

The PRESIDENT: Order, order. The Council stands adjourned till 2 p.m. on Wednesday, the 4th December.

Adjournment.

The Council was then adjourned till 2 p.m. on Wednesday, the 4th December, 1935, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Wednesday, the 4th December, 1935, at 2 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHOWDHURY, of Santosh) in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers and 98 nominated and elected members.

Oath or affirmation of allegiance.

The following person made an oath or affirmation of allegiance to the Crown:—

Mr. Nihar Chandra Chakravarti.

Obituary Reference.

Mr. PRESIDENT: Gentlemen of the Council, we meet under the shadow of a great bereavement which has fallen upon Their Majesties the King and Queen, and on the Royal Family.

I am sure that it will be the wish of the House that a message be sent to His Excellency the Governor as follows:—

"The Bengal Legislative Council in meeting assembled humbly desire that a message of the Council's deep sympathy be conveyed to His Majesty the King on the death of Her Royal Highness the Princess Victoria.

I would ask you, gentlemen, to signify your approval by kindly rising in your places."

All the members rose.

Mr. PRESIDENT: Thank you, gentlemen.

STARRED QUESTIONS

(to which oral answers were given)

Listed posts.

*5. **Rai Bahadur SATYA KINKAR SAHANA:** (*a*) Will the Hon'ble Member in charge of the Appointment Department be pleased to lay on the table a statement showing for the present—

(*i*) how many officers from the Provincial Executive Service have been working as District Magistrates;

(*ii*) how many officers from the Provincial Judicial Service have been working as District Judges;

(*iii*) how many pleaders from the Mufassal Bars have been working as District Judges?

(*b*) Have the Government come to any decision as to the work and general efficiency of these officers in comparison with those of the I.C.S. officers?

(*c*) Are the Government contemplating—

(*i*) increasing their numbers; or

(*ii*) stopping such appointments?

MEMBER in charge of APPOINTMENT DEPARTMENT (the Hon'ble Mr. R. N. Reid): (*a*) (*i*) to (*iii*) On last November, 1935, the figures were as follows:—

(*i*) Eleven.

(*ii*) Ten.

(*iii*) One.

(*b*) and (*c*) It was decided in 1925 that 20 per cent. of the superior posts on the I.C.S. cadre should be listed by 1939. The full number of such posts, i.e., 9 on the Executive and 13 on the Judicial side, have already been listed. No change in the present arrangements is at present contemplated.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Will the Hon'ble the Home Member be pleased to state the percentage of the superior listed posts now held by the Executive side of the Provincial Civil Service?

The Hon'ble Mr. R. N. REID: The nine posts mentioned in the printed reply represent 20 per cent., and at present there are two additional provincial service officers who are holding superior listed posts, making a total of 11. What percentage these 11 posts hold to the total, I cannot say off-hand.

Chhota Sanua-Dhurung Ferry in Chittagong.

76. Haji BADI AHMED CHOWDHURY: (*a*) Is the Hon'ble Member in charge of the Revenue Department aware that there is a ferry ghat between Chhota Sanua, police-station Banskhali, and Dhurung, police-station Kutubdia, Chittagong?

(*b*) If the answer to (*a*) is in the affirmative—

(*i*) what is the annual revenue of the said ferry ghat; and

(*ii*) whether it is payable to Satkania or Kutubdia khas mahal?

(*c*) Is it not a fact that Alakdia lies—

(*i*) at a distance of more than 3 miles from the said ferry ghat; and

(*ii*) outside the jurisdiction of the said ferry ghat?

(*d*) Are the people of Alakdia, Gandamara and Baraghona allowed to ply their own boat to and from Char Dhurung, police-station Kutubdia, for the purpose of cultivation and other business?

(*e*) Are the Government considering the desirability of opening a free ferry ghat for the benefit of the people and also for religious purposes between Alakdia and Char Dhurung?

MEMBER in charge of REVENUE DEPARTMENT (the Hon'ble Sir Brojendra Lal Mitter): (*a*) Yes.

(*b*) (*i*) The ferry ghat is settled annually and its revenue for the last three years was as follows:—

1933-34—Rs. 245.

1934-35—Rs. 150.

1935-36—Rs. 215.

(*ii*) To the latter.

(*c*) (*i*) and (*ii*) Yes.

(*d*) No complaint that the people are not allowed to ply their own boats has been received.

(*e*) No.

Haji BADI AHMED CHOWDHURY: Will the Hon'ble Member be pleased to state whether Government have any objection to the construction of a ferry ghat for religious purposes as a free gift to the public?

The Hon'ble Sir BROJENDRA LAL MITTER: No demand has been made.

Promotion in Government service.

*7. **Rai Bahadur SATYA KINKAR SAHANA:** (*a*) Will the Hon'ble Member in charge of the Appointment Department be pleased to state whether it is a fact that once a man enters Government service either through competitive examination or selection he goes on being promoted in conformity with the duration of his service, be he efficient or otherwise?

(*b*) If the answer to (*a*) is in the negative, will the Hon'ble Member be pleased to state the method of rewarding merit and efficiency and checking demerit and inefficiency in the matter of promotion?

(*c*) If the answer to (*a*) is in the affirmative, are the Government considering the desirability of taking steps for properly dealing with efficient merit and inefficient demerit in the matter of promotion?

The Hon'ble Mr. R. N. REID: (*a*) No.

(*b*) There is a period of probation for fresh recruits who are confirmed only on receipt of satisfactory reports.

In the salary time scales of the different services there are efficiency bars which no officer is permitted to cross until Government are satisfied that he is fit to do so. Officers are also liable to certain penalties for proved inefficiency.

Before promotion is made to selection grades or selection posts or from one service to another, a definite act of selection is made.

(*c*) Does not arise.

Caps for Hindu prisoners.

*8. **Babu KISHORI MOHAN CHAUDHURI:** (*a*) Will the Hon'ble Member in charge of the Political (Jails) Department be pleased to state whether he is aware of a feeling of general complaint amongst the Hindu prisoners detained in jails about the use of caps enforced by the Government?

(*b*) Is it a fact that they made complaints to the authorities as well as to the Jail Visitors about it without any effect?

(*c*) Is the Hon'ble Member aware that the Hindus in Bengal usually have no head dress?

(*d*) Will the Hon'ble Member be pleased to state the special object for enforcing the system of wearing caps against the custom amongst the Hindu community?

(*e*) Are the Government considering the advisability of amending the system?

MEMBER in charge of POLITICAL (JAILS) DEPARTMENT (the Hon'ble Mr. R. N. Reid): (*a*) and (*b*) Government are not aware of any general complaint on the subject, though complaints have been made by individual prisoners from time to time.

(*c*) Yes.

(*d*) Caps have been prescribed for a very long time as an article of prison uniform and are considered desirable on grounds both of discipline and hygiene.

(*e*) No.

Dr. AMULYA RATAN GHOSE: Will the Hon'ble Member be pleased to state the source of his information that wearing a cap on the head is necessary on the grounds of hygiene?

The Hon'ble Mr. R. N. REID: Government's adviser in these matters is the Inspector-General of Prisons who is a medical man.

Dr. AMULYA RATAN GHOSE: Will the Hon'ble Member be pleased to state, if the rule regarding the wearing of caps is not enforced, whether that would be to the detriment of the health of the prisoners?

The Hon'ble Mr. R. N. REID: That, Sir, is quite conceivable.

Babu JITENDRALAL BANNERJEE: Considering the usually dirty state of the caps, is it not hygienically dangerous to wear such caps?

(No answer.)

Political convicts and University examinations.

*9. **Babu KISHORI MOHAN CHAUDHURI:** (*a*) Is the Hon'ble Member in charge of the Political (Jails) Department aware that many political convicts are desirous of appearing at the University examinations?

(*b*) If the answer to (*a*) is in the affirmative, are the Government considering the desirability of making arrangements for the study and examinations of these convicts as is done in the case of Bengal Ordinance prisoners?

The Hon'ble Mr. R. N. REID: (*a*) and (*b*) Under rule 662 of the Jail Code, facilities for prisoners to appear at University examinations are not allowed. Government are not prepared to relax this rule in favour of any particular class of prisoner.

Mr. SHANTI SHEKHARESWAR RAY: Will the Hon'ble Member be pleased to state the reasons for making such an invidious distinction between detenus who are detained at Deoli and other camps, and prisoners detained for crimes?

The Hon'ble Mr. R. N. REID: Prisoners who are convicted come under rule 662 of the Jail Code.

Mr. SHANTI SHEKHARESWAR RAY: Will the Hon'ble Member be pleased to state if prisoners detained under the Bengal Criminal Law (Amendment) Act are not subject to the Jail Code?

The Hon'ble Mr. R. N. REID: Not in this respect, Sir.

Dr. AMULYA RATAN GHOSE: Is it a fact that some of the prisoners were allowed to appear at University examinations, and if that be so, why were not others allowed?

The Hon'ble Mr. R. N. REID: I am not aware of any convict-prisoner being allowed to appear at any University examination.

Mr. SHANTI SHEKHARESWAR RAY: Will the Hon'ble Member be pleased to state the reasons why detenus in Bengal jails are allowed to appear at University examinations?

The Hon'ble Mr. R. N. REID: Detenus come under a different category, Sir.

Mr. SHANTI SHEKHARESWAR RAY: Will the Hon'ble Member be pleased to state if these detenus come under any class of prisoners?

The Hon'ble Mr. R. N. REID: Not of convict prisoners, Sir.

UNSTARRED QUESTIONS

(answers to which were laid on the table)

Detenus formerly associated with Trade Union Movement.

2. Mr. K. C. RAY CHOWDHURY: (*a*) Will the Hon'ble Member in charge of the Political Department be pleased to state in what jails the following detenus, formerly associated with the Bengal Trade Union Movement, are detained, namely:—

(1) Mr. Kali Sen,

(2) Mr. Abdul Razzak.

(3) Mr. Peary Mohun Dass,

(4) Mr. Muzaffar Ahmed, and

(5) Mr. Dharani Goswami?

(*b*) Are the Government contemplating their release to enable them to participate in the forthcoming contest for labour seats?

The Hon'ble Mr. R. N. REID: (*a*) Government are not prepared to give this information.

(*b*) Government do not consider that this is a matter which calls for an immediate decision.

GOVERNMENT BUSINESS

LEGISLATIVE BUSINESS

GOVERNMENT BILLS.

The Bengal Agricultural Debtors Bill, 1935.

(At this stage, discussion on the Bengal Agricultural Debtors Bill, 1935, was resumed.)

Maulvi SYED MAJID BAKSH: Before I rise to move the motion that stands in my name, Sir, I submit that I should like to make a little alteration for the sake of brevity. Instead of proposing "or under any other provisions of this Act," I would suggest "under this Act"——

Mr. PRESIDENT: I think your amendment in the altered form has been handed over to me.

Maulvi SYED MAJID BAKSH: Yes, Sir.

Mr. PRESIDENT: Alright. You can move that amendment.

Maulvi SYED MAJID BAKSH: Sir, I beg to move that in clause 9A (*1*) (*b*), in lines 5 and 6, for the figures and words "section 19, 20 or 21" the words "this Act" be substituted.

Mr. H. P. V. TOWNEND: Sir, Government are prepared to accept the amendment.

The amendment was put and agreed to.

Maulvi SYED MAJID BAKSH: Sir, I beg to move that in clause 9A(*1*)(*b*), in line 6, after the words "regarding any debt" the words "or any share of debt" be inserted.

I propose to have these words added only to make the amendment more clear.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, this clause does not deal with shares in debts but with joint debts where persons concerned are jointly and severally liable. If a debtor is liable to a specific share, there would be no difficulty in dealing with the matter without this section. Orders under section 9A (*1*) would cover the whole debt. I, therefore, do not think that the amendment is necessary.

The amendment was put and lost.

Babu SATISH CHANDRA RAY CHOWDHURY: Sir, I beg to move that clause 9A(2) be omitted.

It seems to me that under some misconception this clause was inserted. I want to drop this clause, first because it will bring in persons who are not actually debtors under this Act but who are absolutely outside the group of agricultural debtors. I have often said, Sir, that I have no objection to the circle of debtors to be given relief being more widened to bring in other classes of people also who are as much in need as the debtors contemplated in this Bill, and that the widening of that circle would certainly be quite welcome. That is the one thing for which I have pleaded all along. But, here, the matter is somewhat different. If persons who are jointly liable with the debtors are brought in under this sub-clause, then the result will be that the Board will decide what one of the joint debtors will have to pay, leaving the question of the other debtors and their liabilities entirely outside their control. To illustrate the point by a concrete example: there are two debtors who have jointly taken a loan, one being a debtor coming under the purview of this Act, and another being one who does not come under the Act. Taking their liabilities to be Rs. 200, if one of them is allowed to go to the Settlement Board, the Board under the powers given under this sub-clause, will be entirely free to assess the liability of the debtor before them. Suppose, the Board fixes his liability at Rs. 30, and allows him to go off on payment of Rs. 50; in that case, he will be leaving the entire burden of the balance of Rs. 150 on the shoulders of the other debtor. It is not known what was the extent of liability of each of them, and it will never be known to the Board, as the other party will not be present to

explain his case. Here is a case, Sir, where under the actual state of things it will do very great injustice to some other persons, because, as in the hypothetical case mentioned by me, the creditor can go to the civil court and have his decree executed on the other persons over whom the Board has got no jurisdiction, especially as the proviso takes care to see that the creditor does not suffer. We have it from the Hon'ble Member that he has been very careful not to make the capitalist or the creditor make any sacrifice on behalf of non-agriculturists. That being the attitude of Government, the result will be that when the creditor goes to the civil court for the purpose of executing a decree in a particular case, I think he will be entitled to place the entire burden of Rs. 150 on the other debtor. Apart from the injustice that will follow, Sir, the Board will be making an apportionment in a case in the absence of one of the parties concerned.

Sir, mine is a moderate demand, and what I claim is to insert the words "with the consent of the other debtor," so that if one of the joint debtors has got to go before a Board to enjoy the benefit of this Act, he should secure the consent of the other debtor. It is very strange, Sir, that in a matter like this it has been provided that the decision of the Board shall be final, and that there can be no appeal before a civil court. Whatever might be said in regard to similar provisions in the other clauses, it cannot be denied that in a matter like this, it is all the more necessary that all the debtors should be jointly allowed to have their say before the Board. Sir, this is after all going to be the law of the land. It is not an Ordinance. The rule of law must be based on reason and commonsense, especially as the door of the civil court has been closed altogether. If remedies are not to be sought there, certainly it is necessary that these parties must have their remedies in such a way that no one suffers on account of the action of any individual member of a joint transaction.

With these words, Sir, I commend my motion to the acceptance of the House.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, this sub-clause is very important, and it must be there. There are two reasons why it should be there. First of all, in case of joint debtors, if they all do not care to make an application, there is no other provision by which they can make it before the Board to have their debts scaled down. From that point of view, it is necessary to have this clause.

Now I come to the question that has been raised by Mr. Satish Chandra Ray Chowdhury regarding the question of injustice on the other joint debtor who is not allowed to come up before the Board. I do not think there is any case of real injustice because the position is this. A and B are two joint debtors. A is a debtor under the Act, and B is a non-agriculturist. Now, A's financial position is such that if his property were sold up for a decree of Rs. 100, the creditor could

not realize more than Rs. 30 from him. That being so, B, the non-agriculturist debtor, will have, in any case, to pay Rs. 70. What the clause provides is that if the Board thinks that Rs. 30 is the proper amount which A should pay, they reduce his debt to that extent, and the balance of Rs. 70, the other joint debtor, B, will have to pay, which he would have to pay even if the properties of both were sold up in the normal course. Therefore, I do not think there is any injustice. It is only a question of deciding the paying capacity, and no more, and, therefore, the man should get relief. The other would, in any case, have had to pay, and it is provided that he should pay Rs. 70.

In view of what I have said, Sir, I have no other alternative but to oppose the motion.

The amendment was put and lost.

Babu JATINDRA NATH BASU: I beg to move that in clause 9A(2), in line 3, after the words "arrears of rent," the following be inserted, namely:—

"or for money paid by the creditor in discharge of the liability for any cess, rate or tax payable by the debtor jointly with other persons."

The general principle of this Act is that rent is excluded from the debts to be taken up by the Boards to be appointed under this Act. But there are certain other payments which landlords sometimes have to make, which though not rent are in the nature of rent. I refer for instance to municipal rates and taxes payable by the tenant. If the tenant does not pay those taxes, the landlord has to pay them in order to save the property, because under the Municipal Acts which govern the urban municipalities in the province, the rates have been made a first charge, and unless those rates are paid the municipality concerned can sell the property having a first charge. My attention has been called to the provision in the Bengal Tenancy Act, in which rent is defined. There it is said that rent includes also money paid for cess—I call attention to the wording of that provision, viz., "under any enactment for the time being in force as if it was rent." Suppose there is no enactment which says that in the event of the tenant not paying, and in the event of the landlord having to pay what was payable by the tenant in the way of rates or taxes, the landlord should be entitled to recover it. What ordinarily happens is this. Under the general principles of law, if a man pays the liability of another person, for which he himself is not liable, he is entitled by a regular action to recover the money so paid from the other person. As some of these payments, particularly in the way of rates and taxes, are payments to save the property from being sold up in pursuance of charges created by legislation, I submit that these payments should not be included

within the operation of this Bill. This Bill very rightly excludes rent because rents are a first charge. If there are other payments which are after all payments to public authorities and which the tenants having failed to pay, the landlords have to pay in order to save the holding from being sold up then these payments should also go out of the operation of this Act. I commend this motion to the House.

Maulvi SYED MAJID BAKSH: I need hardly say that the section of the Bengal Tenancy Act defining rent as read by Mr. Jatindra Nath Basu, is an effective answer to this amendment. This amendment is superfluous in view of that, because rent includes cess and all other liabilities under the Cess Act——

Babu JATINDRA NATH BASU: Under any enactment for the time being in force——

Maulvi SYED MAJID BAKSH: Rent is also a liability——

Babu JATINDRA NATH BASU: But municipal rates and taxes——

Maulvi SYED MAJID BAKSH: Municipal rates and taxes do not come under the same category, as rent is a first charge and municipal rates and taxes are not included.

Babu JATINDRA NATH BASU: May I correct Mr. Baksh. Under the Municipal law, as it now stands, rent is a first charge subject to the payment of Government revenue.

Maulvi Syed MAJID BAKSH: No, Sir. It was my amendment. The original provision in the Municipal Act was such and I introduced an amendment and pointed out the mistake, upon which Government after considering it accepted my view and made rent a first charge and not municipal rates and taxes. If I can get a copy I would show it to Mr. Basu.

Babu JATINDRA NATH BASU: Subject to rent——

Maulvi SYED MAJID BAKSH: Rent is a first charge; after that municipal rates and taxes come in. Therefore under this provision of the sub-section, we are concerned with arrears of rent only, provided of course that there would be something if those dues that are realisable as rent and are not excluded from the sub-section. It is not

excluded by the Bengal Tenancy Act. If that is so, I think this amendment is superfluous.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to support this amendment. Looking at the substance of the thing I think rates and taxes ought to come with rent for the same reason and for the same logic. Rent is excluded because two tenants are liable to pay as long as they have the holding. If one fails to pay then the payment falls on the other. That will not at all be equitable. In the case of municipal rates and taxes it is also the same. Those who are occupying the holdings, none of them should be allowed to escape and go scot free; because he is in possession of the holding he is bound to pay rates and taxes. Having the holdings in his possession he cannot escape the liability of any other account. The municipality have been included in this Bill; if they were excluded it would be different. It would be an equitable thing if rates and taxes could be included along with rent. I submit this ought to be accepted.

The Hon'ble Khwaja Sir NAZIMUDDIN: The right to apply for conciliation of debt is in all cases except rent because rent is a first charge on land. We have made an exception so far as cess and other things are concerned. Under the Bengal Tenancy Act they come under the definition of rent. If we introduce rates and taxes there will be the question of Government dues and other dues also, so I do not think any useful purpose will be served by adding to the list of exemptions. Rent is included and that is all that is needed.

In that view I must oppose the amendment.

The amendment was put and lost.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that in clause 9A(2), in the last three lines, the words "and such order of the Board shall not be questioned in any civil court or in any other manner than that provided in this Act" be omitted.

Sir, if the other debtor has got to come in, it is only fair and reasonable that if there is any miscarriage of justice, or any hardship, the other party should be allowed to go to the civil court to have the matter adjudicated. Justice will not always be available before the settlement Board.

The Hon'ble Khwaja Sir NAZIMUDDIN: The non-agricultural debtor can always go before the civil court as regards the portion for which he is liable. It only exempts the agricultural debtor under the Act from having the portion that has been scaled down questioned in the civil court. That is in conformity with decisions under this Act,

namely, that the decisions of the Board regarding the scaling down of debt, should not be questioned in any civil court. Therefore I oppose.

The amendment was put and lost.

Maulvi SYED MAJID BAKSH: I beg to move that in clause 9A(*2*) in line 9, after the words "Such order of the Board" the words and figures "under sub-section (*1*) or (*2*)" be inserted.

Sir, the section as it is seems that only an order under sub-section (*a*) of section 9A cannot be questioned in a civil court, and does not say anything about the order that should be passed under sub-section (*1*). Sir, perhaps the meaning of the framers of this Act is that even this provision should not be questioned, and I move that that will be met in view of the fact that we are of opinion that both the provisions of the section should be excluded from the judicial court.

The Hon'ble Khwaja Sir NAZIMUDDIN: Reference to sub-section (*1*) is out of place here. The clause would have to be redrafted if this provision were to apply to (*1*) as well. Section 13 has provided that there should be no appeal against any order of the Board under this clause. That should suffice.

The amendment was put and lost

Maulvi SYED MAJID BAKSH: I beg to move that the proviso to clause 9A(*2*) be omitted.

The proviso reads thus:

"Provided that an order of the Board under this sub-section shall not affect the liability of any other person who is jointly liable with the debtor for the debt, but in no case shall the creditor to whom the debt is due be entitled to realise more than his acual dues from any such person."

Sir, it means simply this: although in the case of an agriculturist's share the Board has scaled down his debt, yet the liability of the other joint debtor shall not be reduced, namely, the creditor will be within his limits to proceed against those persons who are jointly liable with the debtor; no matter whether the Board has scaled down the debt of the poor agriculturist it will not affect the creditor at all. I submitted yesterday also that since it is for the relief of indebtedness of the agricultural people of Bengal this Act has been introduced and since Government is making a good deal of sacrifice in the matter of court-fees and other persons are making sacrifices also why should the creditors of all persons be not touched. Why should he not make some sacrifice at least in the general scheme of sacrifices. I do not

really understand why special consideration should be showed to the creditors. Generally in these cases the creditors who want to ensure the payment of their money have included other persons as sureties and the creditors must be included in the scheme of the realisation of debts. Having done so in case of persons where there are no sharers I mean those cases which do not come under section 9 A the Board will scale down the debt. It is only this class of persons who have the good fortune of having joint debtors who will not have to make any sacrifice. I do not understand the reason of it. If a person has only one debtor his debt will be scaled down but in case of debts in which there are more than one debtor and one of them happens to be an agricultural debtor his debt will be scaled down but as regards the others the creditor will be able to realise even the balance to which the debt has been scaled down. For example, if there are 3 persons who owe Rs. 20 each in a debt of Rs. 60 and one of the debtors be an agriculturist and his debt is scaled down to Rs. 10 then so far as the other Rs. 10 is concerned the creditor will not make any sacrifice because he will be able to realise this Rs. 10 from the other two debtors. If, on the other hand, there has been one debtor owing Rs. 60 the creditor would have got into the general scheme and would not have been able to realise the amount without that being scaled down. Why this differential treatment? I think there should be a harmonious treatment in the two cases I mentioned.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: This is another case where I must say something against some of the provisions of the Bill. Here in Government's anxiety to relieve the agriculturists the burden of the debt is being thrown upon other debtors who do not come within category of the agriculturist debtors I cannot conceive why Government cannot find a formula by which the relief that Government is giving to a particular person from the creditor cannot be so given that it does not injure a third party The question of joint liability is a principle which my friend the Hon'ble Member in charge is taking very lightly. I can give one instance of what joint liability is. In my younger days in order to give a start to two young planters I simply put in my signature to a hand note of Rs. 20,000 along with ten others. The decree was passed against all the ten. What happened last year was that the creditor realised the entire amount from me. Joint liability means that although it is joint it is several. If a man is jointly liable with another and if that man does not pay money can be realised from one man alone. But at the same time the person who pays the money has a right to obtain it from the other people as well. Here the Government by a majority wants to do harm to a particular class of people to which we take exception and wants this to be recorded in the proceedings. I know this will go absolutely

unnoticed but the proceedings will remain. I say we have absolutely no right to injure a third party by our legislation. If we legislate and if by our action a third party is injured we will be responsible for that action. When we are doing harm to a third party by giving relief to the agriculturists we are really doing wrong and for that we are responsible. I appeal to the Hon'ble Member in charge to consider this and to suggest an amendment by which in case any relief is given under this Act to one of the several joint debtors of which one is an agriculturist the other debtors should not suffer on account of this. The money thus remitted should not be recovered from the other joint debtors. If that is done I think that will be in accordance with justice otherwise what do you mean by saying that you reduce the debt of one of the joint debtors but you throw the burden of that on other two innocent people. That was not the spirit of the law before. Why do you change your law in such a way that these two other persons are injured by it. I hope the Hon'ble Member in charge will try to meet this contention of ours and will not injure any body by his action.

Mr. SHANTI SEKHARESWAR RAY: I am sorry I have to oppose the amendment of Maulvi Syed Majid Baksh. I do not think that the scope of the Bill should be enlarged, as it is it is a highly controversial measure. It is no use disguising the fact that sooner or later and sooner than the Government and the House realise the measure may take a communal turn. There is already considerable misgivings among the Hindu community in Bengal that this measure will harm the interests of Hindu landlords, Hindu capitalists and Hindu middle class men.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Not of Muslim landlords?

Mr. SHANTI SEKHARESWAR RAY: I know the Hon'ble Member in charge of the Bill has done his best to enshroud this communal aspect from the provisions of the Bill. On the face of it it looks quite harmless. It is meant for all Hindus, Muslims, Christians or any other community that may reside in Bengal. But what are the facts? It is well known that the capitalists, the creditors——

The Hon'ble Khwaja Sir NAZIMUDDIN: We are at present dealing with a particular amendment and Mr. Shanti Sekhareswar Ray was not present when the House dealt with the principle of the Bill. This particular amendment has got nothing to do with the principle of the Bill.

Mr. SHANTI SEKHARESWAR RAY: I am against enlarging the scope of the Bill as my friend the mover of the amendment wants and one of the reasons I gave for not enlarging the scope of the Bill was that we should not antagonise the Hindu community any more than it was necessary to do. It is the avowed object of the Government particularly to give relief to the agriculturists but why do you want to enlarge the scope of the Bill and give relief to all and sundry. Incidentally I was bringing to the notice of the House and of the Government the feeling in the country over this measure. As it is it will be advisable for the Government and also for the House to stick to the avowed object of the Bill, that is to give a certain amount of relief to the indebted agriculturists in Bengal and I hope the House will reject the motion.

Rai Bahadur SATYA KINKAR SAHANA: This Bill was before the House for the last few days. We, the Hindus, did not scent any communal bias in it and I fail to understand why the speaker should bring in the question of communalism.

Mr. PRESIDENT: The Hon'ble Member in charge of the Bill has already taken exception to the remarks of Mr. Ray and I dare say if Mr. Ray were here when the Bill was introduced there would have been no necessity for him to say what he has been saying now, digressing from the amendment on which he is supposed to speak. I gave him long rope to a certain extent, but I must now ask him to confine his remarks to that amendment now before the House.

Mr. SHANTI SEKHARESWAR RAY: I need not dilate on that point further. I oppose the enlargement of the scope of the Bill.

Maulvi TAMIZUDDIN KHAN: Mr. President, Sir, the atmosphere of Bengal seems to be surcharged with communalism——

Mr. PRESIDENT: Don't touch on that, please.

Maulvi TAMIZUDDIN KHAN: Sir, I did not want to assert it positively and that is why I said "seems to be surcharged", although I hope it is not; but even——

Mr. PRESIDENT: Any way, I do not think you should pursue that point after the decision I have given.

Maulvi TAMIZUDDIN KHAN: Then, Sir, can I not say anything in answer to the argument of Mr. Shanti Shekhareswar Ray?

Mr. PRESIDENT: No, it is not necessary; for in that case other members may rise up after you and try to support or contradict your remarks. That would make it impossible for me to keep the debate within proper limits.

Maulvi TAMIZUDDIN KHAN: In that case, Sir, Mr. Ray ought to have been controlled in the first instance. All right, Sir, I will not pursue that point. Sir, Mr. Ray has scented communalism——

Mr. PRESIDENT: But you are not giving up the point.

Maulvi TAMIZUDDIN KHAN: As regards the amendment itself, Mr. Ray said——but I cannot answer him because his arguments were confined to one point only of communalism——

Mr. PRESIDENT: But you can only argue against his assertion that this amendment, if carried, will widen the scope of the Bill.

Maulvi TAMIZUDDIN KHAN: I do not see at all, Sir, how this amendment widens the scope of the Bill. I for myself am not in full agreement with Maulvi Syed Majid Baksh, but that is a different thing. Musharruf Hosain raised another point, which was—although he seemed to support the Maulvi Sahib's amendment—quite different from that of Maulvi Syed Majid Baksh. Maulvi Syed Majid Baksh said that the agriculturists were not being given full relief or something like that, but the Nawab Sahib said that some other persons who were not agriculturists but were at the same time debtors, were being saddled with an additional burden. Sir, I do not think it is so, or that it is at all intended in this proviso that any additional burden should be thrown upon the shoulders of any non-agriculturist debtor. On the other hand, it will give some sort of relief to the non-agriculturist debtors also, because, supposing two persons are indebted jointly for a particular sum of money and one of these two persons is a debtor and the other, not being an agriculturist, is not a debtor within the meaning of this Bill, the debtor can apply for the settlement of his debt, but the non-agriculturist can not. The Board can scale down the debt so far as the agriculturist debtor is concerned, or without scaling it down, can award an instalment for a certain number of years. So that the result of this is that the agriculturist-debtor is made liable for either the full amount of the debt or at least for a portion of that amount. Now, the proviso says that so far as the other debtor, viz., the non-agriculturist debtor, is concerned, he cannot be made liable for the whole money but only for the balance which remains after what has been realized from the agriculturist-debtor; thus the non-agriculturist debtor also is benefited under this proviso.

I think that the proviso is not well drafted and may be liable to misinterpretation, because it says that even though a Board may deal with the debt of an agriculturist-debtor, still other persons, who are not agriculturists, but are joint debtors with the agriculturist debtor will be made liable by the civil courts for the balance of the money. Sir, the question arises whether joint proceedings before the Board and the civil court can go on at one and the same time. The Board scales down or settles down or settles the debt of an agriculturist debtor. If at the same time the creditor can go to the civil court in respect of a non-agriculturist debtor, in that case it will result in great confusion for the Board may decide the matter in one way and the civil court in another. The Board will realize from the agriculturist-debtor and the civil court will try to realize perhaps the whole amount from the non-agriculturist joint debtor. So there is an anomaly in this section, and unless something like this is provided, viz., that so long as an award made in respect of the debt of an agricultural debtor will be in force, no civil court will have any jurisdiction to deal with the same debt in respect of other debtors; otherwise innumerable difficulties will arise in respect of the realization of the dues as they are settled by the Board and the civil court respectively. I think some way may be found to remove this anomaly, and if that is done we may accept the clause as it is, although I think that it does not go far enough. I think, therefore, that to meet the ends of justice persons other than agriculturists should be given relief along with the agriculturist-debtors in those cases in which the agriculturists are jointly indebted with non-agriculturists. But, unfortunately, Government are not prepared to go so far. And I, too, on my part do not want to go so far as to propose at this stage that Government should revise its own scheme and should give relief to non-agriculturists also, but what I say is that at least this anomaly should be removed.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, the position is this, that the joint debtor is being made to pay simply because, under the scheme, we think that the agriculturist-debtor cannot pay any more. So, there is no question of hardship to the other man, viz., the third party. There is another reason why this clause has been drafted in this fashion, and it is because of the very great practical difficulty in giving relief to non-agriculturists. When this question was discussed in the Select Committee, it was discussed at very great length, and there was a suggestion made that there should be an apportionment of debt between the agriculturist-debtor and the non-agriculturist debtor and the apportioned amount should be scaled down; it was also pointed out at that time that it would be extremely difficult for a Board like that to apportion an amount between two joint debtors because it is very difficult to find out what is the exact amount which A, the agriculturist-debtor, should pay as against B, the non-agriculturist debtor.

Moreover, this question of apportionment would raise so many difficult issues that we in the Select Committee ultimately decided on a compromise in this form, and, as I have pointed out, there is practically no substantial injustice done to anybody. The agriculturist-debtor makes an application stating that he is unable to pay his debt, which means that the other man would have to pay in any case, that is according to his paying capacity. Even in the case cited by the Nawab Sahib, where he has spoken of a debt of Rs. 20,000, if the joint-debtors have gone broke in the mean time, he would not have realized anything from him. Supposing the paying capacity of the Nawab Sahib's joint-debtors was nil, the mere right of being able to sue those people would be of no use. He would have suffered loss to the extent of the whole of the Rs. 20,000 and he could not get anything out of them. Similarly, here we place the man in the position that his paying capacity is to the extent of the amount that has been scaled down. Now, Sir, suppose that in the case cited by the Nawab Sahib there were ten joint-debtors, instead of two, with a liability of Rs. 20,000, and the Nawab Sahib was sued and the entire amount was realized from him and the whole amount taken by the joint debtors; and supposing that the Nawab Sahib brought a suit for this Rs. 20,000 —I am of course bearing in mind the fact that the Nawab Sahib is a big business-man and that he may not care for this paltry sum of Rs. 20,000—he would have realized Rs. 5,000. So that the position is that the Nawab Sahib has got to lose Rs. 15,000 in any case. Here, also, the position is exactly the same. So in view of the above I oppose the amendment.

The amendment of Maulvi Syed Majid Baksh was put and lost.

Maulvi SYED MAJID BAKSH: Sir, I beg to move that in the proviso to clause 9A(2), in lines 1 and 3, the words "an order of the Board under this sub-section shall not affect the liability of any other person who is jointly liable with the debtor for the debt but" be omitted. The proviso will then read as follows:—

"Provided that in no case shall the creditor to whom the debt is due be entitled to realize more than his actual dues from any such person."

This amendment, Sir, is a lesser evil. If the proviso could be omitted, it would have been better, but since it could not be omitted I now want that the objectionable portion of it may be omitted, and that is the aim of my amendment. So that the argument that was employed in respect of the previous amendment will apply in this case also. This will obviate the difficulty about the apportionment of the debt, to which the Hon'ble Member has referred.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I have no fresh argument to advance in opposing this amendment. I formally oppose it.

The amendment was put and lost.

Kazi EMDADUL HOQUE: Sir, I beg to move that in the proviso to clause 9A (*2*), in line 3, after the word "debt" the words "otherwise than as a surety" be inserted.

Clause 9A(*2*) says that when there are two or more persons jointly liable for a debt and one of them is a debtor within the meaning of this Act and the other is not, then the one who is a debtor under this Act may make an application and seek relief in respect of his liability as regards his debt. Then the proviso to sub-clause (*2*) of 9A runs thus: "Provided that an order of the Board under this sub-section shall not affect the liability of any person who is jointly liable with the debtor for the debt." So, according to this proviso the liability of a person who is not a debtor under this Act will remain as ever, subject to this of course, that a creditor will not be able to realise more than his actual dues from any such person—that is the only provision in his favour. My Hon'ble friend said the other day that by scaling down the liability of the debt some concession might be made towards a person who is not a debtor within the meaning of the Act. He has stated by way of an example that if the debt be for Rs. 100 and in the case of a debtor it is scaled down to Rs. 30 then the balance (Rs. 70) would only be realisable from the other person who is jointly liable for the debt; that is to say, he means that the person who is not a debtor within the meaning of this Act will also have his liability reduced by Rs. 30. But I do not think, Sir, that he is substantially relieved of any responsibility whatsoever; he does not get any suitable relief at all, Rs. 70 at least will be realisable from him. But what does ordinarily happen in a civil court is that although every one is liable to the extent of Rs. 100 yet one has a right to be reimbursed if there is ground for it. If a creditor instead of going to this Board goes to the Civil Court, what will happen? The Civil Court will give him a decree against the debtor and the non-debtor for the entire amount of Rs. 100 and every one of the debtor and the non-debtor will be jointly and severally liable to the extent of Rs. 100 and even if the total debt Rs. 100 be realised by the execution of the decree from the person who is not a debtor within the meaning of this Act, then that man will be in a position to recover by way of a contribution at least half the amount from the man who is a debtor under this Act. When the debt is not specified and it is not known how much one has borrowed when both are the principal borrowers then in that case at least Rs. 50 will be realisable from a debtor by bringing a contributory suit in the Civil Court, by a non-debtor after he has already paid the whole amount of Rs. 100 and

if he can prove to the satisfaction of the Civil Court that he was merely a surety and not the original borrower then in such a case he will be entitled to get a decree against a debtor even to the extent of Rs. 100 by a contribution suit in the Civil Court. In other words, a non-debtor in a Civil Court eventually can get what relief he can legitimately claim but what is the relief that such a man gets under a Board's award? He does not get any relief whatsoever. If he is less liable than the debtor in the sense that he took comparatively less money along with him, even then he would not be entitled to have his liability fixed down to half the amount, and if he merly stood as a surety, in which case, of course, he will be entitled ultimately to recover the whole amount if he goes to the Civil Court and brings a contributory suit, but here under the Board's administration he will be without any remedy. Therefore I do not understand what the Hon'ble Member means when he says that the man who is not a debtor but is jointly liable for the debt will get relief to the extent of Rs. 30.

Then there is another point. My Hon'ble friend said the other day that in order to give relief to a surety we shall be bringing in some other persons who do not deserve any consideration whatsoever, that is to say, if our amendments as regards sureties be accepted then effect of it will be letting in some other persons to come in and prefer a claim of exemption on the ground of their being sureties. This apprehension is I understand merely illusory. Well, if they are sureties and if the Board decides so, they will get the benefit. But if the Board does not decide that they are sureties, the Board will not give them any relief at all. What will the Board be there for? The Board will be there to decide these cases and it will be empowered to take evidence of the persons whom they think to be in a position to depose in the cases. If after examining the persons the Board finds that a particular man is a surety he will be given relief, but if it finds that he is in the same position as the original debtor then it will give him no relief. So I do not understand how by giving relief to the surety we shall be letting in other persons to come in and prefer a claim for exemption.

Then, Sir, there is another aspect of the matter. My Hon'ble friend very eloquently said the other day that Government has great concern for the poor cultivators and has actually felt it imperative to bring forward this measure to give these poor people some relief. My Hon'ble friend does not consider to what a miserable plight he is going to drive the poor cultivators by not accepting amendments which were moved a little while ago and this amendment to boot. I think the cultivators will not be substantially relieved of their distress, merely by passing this Bill into Act; no doubt they will get some relief in respect of their past debts. But we cannot think that the cultivators will not be in need of money in future in order to carry on their avocations. Government is not going to give them any money in their times of

necessity. So, whenever they will need money, they will have to knock at the doors of the *Mahajans* who will demand sureties. Without sureties the *Mahajans* will refuse to give money. Then how will your liberality help them in their time of need? Absolutely not. You are driving them to a more disastrous situation. In the mufassal we generally find that when the cultivators go to the *Mahajans* for a loan the latter in order to have their money secure invariably want sureties. And unless and until the borrowers can find good sureties, substantial men to stand as such, no *Mahajan* would advance them any money in the mufassal. It is not by a magic wand that you can drive away calamities from the land. So the poor cultivators will have to face them. The Hon'ble Member said the other day in his speech that jute prices are rising and that money would come jingling into the pockets of the cultivators. I do not think money will find its way to the cultivators' pockets, so if the cultivators do not get money which they occasionally need for their household requirements they would be brought to the verge of starvation; consequently they will have to go to the village *Mahajans* as Government has not made any provision for helping them. They will undoubtedly have to go to the village *Mahajans* and the latter will not give them any money without any substantial sureties and who would care to be the sureties only to bear the burden of the debt, if there be no adequate safeguards for them. My Hon'ble friend said that the case of a surety is a very hard one, but he does not see his way to give any relief to him. A man who stands surety for another does so out of kindness, but he will not do it if he do not get any protection. I want that if there are two persons jointly liable and one of them is the original debtor the other merely a surety, then the surety will get full relief, of course if he be a principal borrower like the debtor, then he may not get any relief and Government may be right in that case to some extent to shut him out from the privileges under this Act.

The Hon'ble Khwaja Sir NAZIMUDDIN: It appears to me, I may be wrong, that the amendment of the Kazi Sahib is definitely against the surety because the proviso is for the benefit of the joint debtor. He says otherwise than the surety. It is not so. Those who are sureties, the proviso will apply to, it will not apply in the case of the joint debtor. The words are "otherwise than as a surety". It means other joint debtors; the proviso will not apply to them. If he is a surety it will apply. I think this is wasting the time of the House. I have made three attempts to explain this position to the Kasi Sahib, but I have failed to explain it to him.

The amendment was put and lost.

Mr. H. P. V. TOWNEND: Sir, I beg to move that in the last line of the proviso to clause 9A (*2*), the word "actual" be omitted.

Government have been advised that, if this word is included, some contrast between actual dues and contingent dues, or some other form of dues, might be thought to have been intended. It is merely a drafting amendment.

The amendment was put and agreed to.

Mr. H. P. V. TOWNEND: I beg to move that in the proviso to clause 9A (*2*), last line, for the words "any such person" the words "the persons jointly liable" be substituted.

This is a drafting amendment. It was suggested in various quarters that this proviso as it stands is not clear. The intention is that the creditor should collect from the joint debtors no more than he could have collected if there had been no award. For instance when three people are jointly and severally liable for a debt of Rs. 100 the creditor should not be allowed to collect more than Rs. 100 in all even if the liability of one of the persons be reduced to an amount fixed in the award and that person is ordered to repay it in a certain manner.

The amendment was put and agreed to.

The question that clause 9A as amended stand part of the Bill was put and agreed to.

Clause 10.

The question that clause 10 stand part of the Bill was put and agreed to.

Clause 11.

Mr. PRESIDENT: Mr. Basu, have you got your amendment ready?

Babu JATINDRA NATH BASU: I have altered the amendment.

Mr. PRESIDENT: Have you got a spare copy with you? If not, will you kindly read out the amendment to the House?

Babu JATINDRA NATH BASU: There is a mistake in the printing on the agenda. It should be 11 (*1*) (*bb*).

Sir, the object of this amendment is to enable——

Mr. PRESIDENT: Your amendment relates to 11 (*1*) (*bb*). Will you finish (*a*) first and then take up (*b*)?

Babu JATINDRA NATH BASU: Yes, Sir. I move that in clause 11 (*1*) (*bb*), in line 4, after the word "persons," the following be added, namely:—"and the share of the debt for which they are respectively liable".

Clause 11 lays down what particulars should be stated in the case that has to be submitted to the Board. That statement should be as full as possible in order to be helpful to the Board and to the parties concerned. Sir, the particulars have been stated in this clause in detail. Clause (*bb*) says—"details of any debts for which the debtor is liable as a surety or is liable with other persons as a joint debtor or joint surety together with names and addresses of all such persons". A difficulty may arise as to the proportion of the debt for which the debtor, who has filed the application, is liable, and for which the persons who have not filed the application but who are joint debtors with him are liable. That fact should also be before the Board and the persons who have to appear before the Board in connection with the matter to be considered by the Board. What I desire to add is that the proportion of the debt for which these persons are liable to with the applicant should be stated so that not merely the amount of the joint debt but the amounts for which joint debtors are liable with him are stated for instance, a man is jointly liable with A, B and C. Then he states what his own share of the debt is and what the shares of the others are. There will be no misleading the Board by statements that the applicant is in fact liable for a half share of the debt, or that he is liable for a fourth share of the debt. The Board should have the facts before them as to who are these co-sharers and what their shares are. In many cases the joint debt are debts which the applicant and his co-sharers have to pay in respect of ancestral liability. The applicant may try to throw a larger share of the joint liabilities on his co-debtors. In order to protect the co-debtors it should be stated that the proportion of the applicant is so much and the proportion of the others is so much. For instance, if a person is jointly liable with his two sisters in respect of a debt, he may state that there had been an adjustment between these co-debtors and after such an adjustment he is liable for only a fourth of the debt though in fact his share of the debt may be a half. So unless the Board has before it the particulars as to the share of each person, it may be difficult for the Board to decide the matter. It would be helpful to the Board as well as helpful to all concerned.

The Hon'ble Khwaja Sir NAZIMUDDIN: These are questions which will be more properly dealt with when an examination is made of the applicant. These are illiterate people and it is no use burdening them with so much detail. After all they will have to appear in person before the Board, and the Board in a very few minutes will get hold of

the facts by asking questions. No useful purpose will be served by putting those things in the applications, and it may be difficult in most cases, and you may not be able to do so. The persons may not know the history of their ancestral debts. They may sign a blank paper; they do not know what their liability is. In these circumstances I would request Mr. Basu not to press his amendment.

The amendment was put and lost.

Babu JATINDRA NATH BASU: I beg to move that in clause 11 (*1*) (*c*), in line 4, after the word "any" the word "attachment" be inserted. There is a misprint in the printed Agenda. Instead of "11 (*1*) (*c*)" it should be "11 (*1*) (*c*)". I would ask your permission to have this corrected in the Agenda.

Sir, here the clause as drafted requires the debtor to state particulars of his property, movable and immovable, and in order to help the Board, it requires him also to state what charges there are upon it, apart from ——

The Hon'ble Khwaja Sir NAZIMUDDIN: We are accepting this.

The amendment was put and agreed to.

Babu JATINDRA NATH BASU: I beg to move that in clause 11 (*1*) (*c*), last line, after the word "debtor" the words "and the proportions of the shares of the debtor and his co-sharers" be added.

It is on the same basis as the last amendment but one that I moved. That is, I want not only the share of the debt of the debtor but that of his co-debtors should also be mentioned. I think the Board should be in possession of the fact as to what is the share of the applicant and of his co-sharers in the property, so that persons not before the Board may not suffer. My attention has been called by the remarks of the Hon'ble Member to the procedure that is actually to be followed in this case. I quite appreciate the difficulty where the applicant will probably be ignorant persons. But, Sir, the Board in many of these cases may not be expert Boards, and in filing information it will be better to have this provision to enable the Boards to properly deal with these matters. After all, every person knows what is his share in the property, and what the share of his co-sharers is. So he may state the share without difficulty. Otherwise it may happen in the way I have mentioned. A man may try to deprive his sister of her share of the joint property. There may be three brothers and two sisters who are all owners of a particular property, and the applicant may set out in his statement that he submits to the Board that he has only one-third share in the property ignoring the rights of his sisters altogether. So I intend to have it provided that the applicant should also set out in his

statement the particular share that he has in the property and the share of each of his co-sharers.

The Hon'ble Khwaja Sir NAZIMUDDIN: The Muhammadan law of inheritance is so intricate that it is asking a very great deal to state what is the particular share of a co-sharer. If it were a case of three brothers and two sisters only it would have been very easy but what about a Muhammadan's property when it goes to nieces and other people. I am sure Mr. Basu will appreciate the difficulty. Besides that I consider all these amendments to be consequential. My argument in any case is that it will be much simpler and easier for the Board when a man appears before it to find out all the facts and it will be the duty of other co-sharers to protect their interests by being present so that the co-sharers may disown the facts if they were not true. So I think there will be no difficulty as regards facts.

The amendment was put and lost.

Babu JATINDRA NATH BASU: I beg to move that in clause 11 (*1*) (*cc*), last line, after the word "transferee" the words "and the nature and particulars of the transfer" be added

In all legislation dealing with settlement of debts the authority initiating the legislation as well as the authority administering the measure take special care to see that the debtor does not attempt to either mislead the authority concerned or to cheat the creditor. He has therefore to place before the administering authority as much details of the transfer as possible Here what is said in (*cc*) is that he should give only the name and address of the transferee but he does not say whether the transferee has sold the property or has mortgaged it or has leased it or whether the transfer is a gift or what it is. He merely gives the name and address of the transferee. I think he should further state what the particular nature of the transfer is and that will be helpful to the Board dealing with the matter and also to the administering authority.

The Hon'ble Khwaja Sir NAZIMUDDIN: Again I say these are very difficult things. If we find that there is a necessity for it we can provide for it by rules. If the amendment is accepted copies of all the documents will be required.

Babu JATINDRA NATH BASU: Why?

The Hon'ble Khwaja Sir NAZIMUDDIN: He will have to show whether he is a patnidar or something like that. It will be very difficult.

The amendment was then put and lost.

Mr. H. P. V. TOWNEND: With your permission, Sir, I beg to move amendments Nos. 222 and 224 together.

I beg to move that the word "and" be added after clause 11 (*1*) (*d*).

I also beg to move that the word "and" at the end of clause 11 (*1*) (*e*) and clause 11 (*1*) (*f*) be omitted.

The main amendment is to omit clause 11 (*1*) (*f*). The reason is not that we do want an application from a "debtor" to omit the provision about his being unable to pay his debts in the ordinary course, but that this is out of place in a statement of debt . It will be remembered that a statement of debt will have to be submitted by any alleged debtor who is so directed by the Board under section 13 on the application of a creditor. It is quite likely that there might be a debtor who is quite solvent and who will not be prepared to sign a declaration that he is unable to pay his debts; his objection to paying a debt may be that the debt claimed is not owing. We do not want the debtor to be debarred from putting in a statement of debts by being asked to sign a declaration which is untrue and thus to expose himself to having to pay costs. Of course in practice he would simply put in a statement of his debts and explain the position but why should we put in the law something which we do not want?

The other objection is that, when an application is made by joint debtors, some of the joint debtors though perhaps unable to pay their debts would not have agriculture as their primary means of livelihood. In view of that we propose that clause (*f*) should be omitted so that solvent debtors may be able to comply with the orders of the Board when necessary and that non-agricultural joint debtors should be able to put in a statement of debts. There could be provision in the rules for declarations by the original applicants.

The amendments were then put and agreed to.

The question that clause 11 as amended stand part of the Bill was put and agreed to.

Clause 12.

Mr. H. P. V. TOWNEND: I beg to move that in clause 12 (*1*), lines 2 and 3, for the words " for examining the applicant" the words "for consideration of the application" be substituted.

I also move that in clause 12 (*3*), line 1, for the words " shall be examined" the words "may, at the discretion of the Board, be examined" be substituted.

I also move that after clause 12 (3) the following be added, namely:—

"(4) No woman who has made an application under section 9 shall, against her will, be required to appear in person before the Board for the purpose of being examined under this section."

It has been pointed out that *pardanashin* women will not, on any account, come forward to give evidence and it has also been pointed out that there may be other people who are unable to appear to give evidence on oath. There may be chronic invalids who are quite unable to undertake even a short journey to appear before a Board, so we must give discretion to the Board to decide whom they should exempt from appearance. In order to cover the case of women, we have made the provision that no women shall against her will be required to appear in person before the Board for the purpose of being examined. In order to deal with the case of invalids and others we have provided that the Board may at its discretion call for applicants to be examined. All these cases will be covered by rules. The ordinary procedure will be that applications should come up before the Board but there are cases where they should not be asked to come. Those cases have admittedly to be dealt with. The amendment to sub-clause (*1*) is purely a drafting amendment. The Board will fix a date for the consideration of the application, not necessarily for examining the applicant. I think that is all I need say on the point.

The amendments were put and agreed to.

Babu KHETTER MOHAN RAY: Sir, I beg to move that in clause 12 (*2*), in line 1, after the word "notice" the words "by registered post" be inserted.

There is no provision for the manner of service of notice. It has only been laid down in the clause that the Board shall, in the prescribed form, serve notice. We want that notice should be served in a particular manner, that is by registered post, so that it may reach the creditor or the debtor in time to make a statement. Any other form of serving notice, I think, is not feasible. Personal service or handing over the notice will require peons and other things. Therefore I say that notice should be served by registered post which is sure to reach the debtor or the creditor. With these words I move my amendment for the acceptance of the House.

The Hon'ble Khwaja Sir NAZIMUDDIN: Postal service has got certain disadvantages. It has been found that in the service of notice in cess revaluation cases the addressee sometimes in order to avoid the service intimated through the members of his family that the addressee has left and the peon returns the notice with the remarks "not found

in the address." The postal peon will not give any information as to the heirs. Postal service may be of advantage as an alternative. If an alternate copy of the notice is to be sent by post as has been adopted in the Punjab Civil Code this can be provided for in the rules. I do not see why there should be any provision for sending a notice by registered post at all. After all if it is found in practice that it is necessary it may be done by rule but there should be no compulsion that it should be done by registered post.

The amendment was put and lost.

The question that clause 12 as amended stand part of the Bill was put and agreed to.

Clause 13.

Mr. H. P. V. TOWNEND: Sir, I beg to move that in clause 13 (*1*), line 1, for the words "after examining the applicant," the words "after consideration of the application" be substituted.

This is consequential to the amendments adopted in respect of the last clause.

Mr. PRESIDENT: Then you are not moving amendment No. 239?

Mr. H. P. V. TOWNEND: Yes, Sir. I shall move amendment No. 239 presently.

Sir, I beg to move that in clause 13 (*1*), lines 1 to 3, for the words "the application is not dismissed forthwith under section 17, the Board shall" the words "the Board does not dismiss his application forthwith under section 17, it shall" be substituted.

Sir, this is purely a drafting amendment. The clause as it stands in the Bill now is worded rather in a colloquial style, and the Legislative Department, after re-examination, thought that it should be recast. And acting on their advice I bring forward this amendment.

The amendments were put and agreed to.

Mr. S. M. BOSE: May I, Sir, with your permission make a verbal alteration in my amendment that instead of (*a2*), (*bb*) be substituted so that it will read like this—

"that in clause 13 (*1*) in line 4, after the words "the applicant" the following be inserted, namely—

'and on all persons referred to in clause (*bb*) of sub-section (*1*) of section 11.' "

Mr. PRESIDENT: Yes, you have my permission to do so.

Mr. S. M. BOSE: In clause 11 (*1*) when a debtor applies for settlement, he has, *inter alia*, to put in under sub-clause (*bb*) details of any debt for which the surety is liable as a joint-debtor. Now, Sir, after an applicant has been examined under clause 13, the Board is to serve a notice on the other parties, but when the applicant is a debtor, I think the creditor and the other co-debtors referred to in sub-clause (*bb*) should also be informed. The Hon'ble Member in charge of the Bill when dealing with amendment No. 211 said that this matter would be considered after the applicant had been examined by the Board. So, when the applicant has been examined by the Board, it should serve notice on every one of the other party. When the date of application is admitted then a notice, according to my amendment, should be served also on those persons mentioned in sub-clause (*bb*), viz., co-debtors, sureties, etc.

Mr. H. P. V. TOWNEND: Sir, Government are not prepared to accept this amendment because of some practical difficulty. In the statement of debt the debtor is asked to give particulars of any of his co-sharers. These co-sharers are co-sharers with him only in point of land, but they are not necessarily co-sharers in everything else, and they may not be insolvent and they may not be prepared to put in applications at all. So, there is no reason why they should be made to put in applications or statement of debt. Under the provisions of clause 12 they will be given a chance of coming forward and telling the Board that they are not co-debtors and that they are merely co-sharers in the land, there is no reason why they should have to put in a statement of debt. They will be given news under clause 12 that proceedings are going on, so that they might come forward, if necessary, and say to the Board that the applicant does not own as large a share of the land as he claims or that he has no right whatsoever to the land. In the same way, when there are joint debtors, any one of them may not wish to appear. We have made provision for that in clause 9A (*2*). So, why should they have to go to the Board with an application or be compelled to pay costs? It is not necessary for them to come forward in order to help the disposal of the debtor's application. The object of the amendment is really that all co-debtors should be compelled to start a new case; but we do not want to compel the debtors to come forward if they don't want to. So, I oppose the amendment.

The amendment was then put and lost.

Maulvi ABUL QUASEM: Sir, I beg to move that in clause 13 (*1*), line 5, for the word "named" the words "whose name and address are given" be substituted.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I accept the amendment.

The amendment was put and agreed to.

Babu KHETTER MOHAN RAY: Sir, I beg to move that in clause 13 (*1*), in line 7, for the words "one month" the words "three months" be substituted.

In the original Bill, Sir, the period was two months, but the Select Committee has cut it down to one month. The Board will receive numerous applications and it will be impossible for a single Board to receive all the applications and statements, and compare the documents because if within one month the statements as well as the documents are not produced—and they must be produced and compared—will it be possible for one Board to receive the statements and examine the documents? I do not think it will be possible to do so even within three months. I may say that it will not prolong the proceedings because the Board will be occupied in the mean time. There will not be any regular courts or any officer to receive and compare the documents as in the case of the civil courts. Considering these facts, I think that the time should be extended—it may be two months, but three months would be more suitable. With these words, Sir, I appeal to the Hon'ble Member to accept this amendment, as otherwise there will be great inconvenience caused to the Board as well as to the parties concerned.

Mr. PRESIDENT: I think Mr. Sarat Kumar Roy can also move his motion at this stage.

Mr. SARAT KUMAR ROY: Would it not be better, Sir, if I move my motion after the fate of Mr. Khetter Mohan Ray's motion was decided?

Mr. PRESIDENT: No. You can move it now.

Mr. SARAT KUMAR ROY: I beg to move that in clause 13 (*1*), in line 7, for the words "one month" the words "two months" be substituted.

Sir, it generally happens that *mahajans* and landlords have to deal with a large number of persons as debtors. Consequently if they apply simultaneously it would be difficult for the *mahajans* and landlords to attend to all those cases at different Boards within the short space of one month.

Sir, in view of the fact that this legislation offers a great boon to the debtors of Bengal, we may safely expect that such debtors will flock to the Board to avail themselves of the advantage secured for them

by this Act at the earliest opportunity. Sir, if they come up all in a body it would be very difficult for the creditors to look up to the numerous cases that will arise and unquestionably the creditors will require time to do so. It seems to me that a month's time is rather too short for the purpose. In the original Bill the period was fixed at two months. I do not know for what reason the Select Committee have reduced it to one month. They have assigned no reason for doing so. In my opinion, even two months may not be sufficient when the creditors will have to depend upon the general notice published. Hence the time should be extended at least to two months, if not to three.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, while I admit that there is a certain amount of force in the arguments advanced by Mr. Sarat Kumar Roy, there is this to be said for the existing provision that this question was carefully discussed in the Select Committee and the majority decision was accepted, and I, naturally, find it difficult to go back on that now. We had provided for two months. On the other hand, I do not think there will be any harm if it is left at one month, because the Board can always grant time where they find that there has been reasonable cause for delay. Secondly, it is only a statement of debt and no production of documents or other things is involved in this matter, which will be taken up later on. Thirdly, if the Board find that they are crowded with applications, they can delay issuing notices and that will give more time to the creditors and the debtors, whereas, by leaving it at one month we have provided a safeguard against any possible abuse by the Boards of the powers given to them to grant further time and by their being enabled to delay the issue of invitations. If we accept two or three months and if they find that progress in the disposal of applications is not expedited, there will be no power for them to extend the time further. So, the balance of advantage appears to be in favour of one month. Therefore, I regret that I cannot accept any of the amendments.

Babu JATINDRA NATH BASU: Mr. President, Sir, the Hon'ble Member has stated that a Board will be at liberty to extend the time from one month to a longer period, but I can find no provision in the Bill which vests the Board with such an authority to extend the period, which is fixed by the Act itself, nor is it left to the Government under its rule-making powers. The time is fixed by the Act, and it must be one month.

The Hon'ble Khwaja Sir NAZIMUDDIN: If the hon'ble member will kindly refer to the proviso to clause 13 (*1*), he will find that it says that if the Board is satisfied that the debtor or the creditor is, for good or sufficient cause, unable to comply with such notice, it may

extend the period for the submission of his statement of debt. I think that will satisfy Mr. Basu.

Babu JATINDRA NATH BASU: I quite see, Sir. I am very sorry.

Babu KHETTER MOHAN RAY: But this extension of time is left to the discretion of the Board.

The amendment of Babu Khetter Mohan Ray was put and lost.

The amendment of Mr. Sarat Kumar Roy was put and lost.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that after the proviso to clause 13 (*1*) the following proviso be added, namely:—

"Provided further that if on the date fixed either any of the creditors or the debtor, as the case may be, does not appear he shall be served with another notice by registered post, with acknowledgment due fixing another date."

Sir, I am glad to find that the Hon'ble Member was pleased to observe that at least for once in regard to the last amendment we had reason on our side. Taking his admission, that it may create some difficulty, I move this amendment and I hope that the Hon'ble Member will find once again that we have sincerity and reason on our side. What I say is that so far as the question of a creditor appearing after getting notice is concerned one month may do, but there may be occasions in which the creditor may not at all get the notice as proposed by this clause. In that case and we all know that there are slips in the service of processes even in Civil Courts where the matter is rigidly looked into. We find very often that *ex parte* decrees are passed in the absence of the other party, it is found in a not very few cases, when application for review is made that the notice was not at all served. When a party comes at a very late stage he finds that a great deal of mischief has been done as in the execution stage his lands are being taken possession of and his movable properties seized. Then he files an application for review. I think the object of this Bill is not to allow matters to drag on in this fashion but to finish every thing speedily. If that be so, particular care should be taken to see that the notice is properly served on the other side. It does not matter whether it is the creditor or the debtor. If the creditor is the applicant he may sometimes see his way to suppress the process. What I contend for is that if on the date fixed after one month the other party does not appear, then in that case the Board should be required to serve another notice by registered post as is very often done in the Civil Courts. Although there is no hard and fast rule, Civil Courts do take care to see that

notice is actually served on the party by registered post. So, in a case like this where vital interests are involved, if a party does not put in appearance the presumption ought to be that he did not get the notice. I want that in such cases in order to be on the safe side the Board should be required to send a registered post card notice. I think there will be no objection to this being done as it will not delay matters. On the contrary this will obviate the necessity of review applications being made and thereby causing delay. I hope that in this instance the Hon'ble Member will find reason on our side and will see his way to accept at least one amendment from this side.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I regret I cannot give a certificate that there is reason behind this amendment and that this should be accepted. I may tell my friend the mover that as a matter of fact we have accepted an amendment from that side. Wherever we find that an amendment is reasonable we accept it. But in this particular instance I find that it will not only mean delay but it also means increased cost and that is a thing we should try to avoid as much as possible. After all no person would like that he should go on giving notice one after the other and we have provided this with the idea that one notice will suffice. I think there is an admission from the trend of his speech that if a man can show that he has not received the notice he can have the proceedings altered or started afresh. So in view of the fact that no orders will be binding if the man can prove that he has not received the notice this amendment will be an encouragement to the people to delay in appearing until the second notice is served. Therefore, Sir, I regret that I cannot accept this amendment.

The amendment was then put and lost.

Babu KISHORI MOHAN CHAUDHURI: I beg to move that in clause 13 (*2*), in the last two lines, the following words be omitted, namely:—

"and such order shall not be questioned in any Civil Court or in any manner."

Sir, there is of course the proviso that whenever an aggrieved person can show proper cause explaining the reasons of his absence, the Board may extend the time for submitting a statement of debts. But there may be a case in which the creditor may have gone to the Civil Court and instituted a suit for relief without knowing anything that the matter was being dealt with by the Board. In that case he shall have to go to the Board for a review of his case after having already incurred some expense. For this reason I submit that the last two lines of sub-section (*2*) should be omitted. If he can show proper cause for his non-appearance in time then the debtor's application should not be

accepted or considered. But he may by way of review or by going to an appellate court get his remedy. At the same time there may be circumstances in which without knowing that the matter was before the Board he may have gone to the Civil Court. In such cases the Civil Court might deal with the matter. For these reasons I propose this amendment and I hope Government will accept it.

Babu KHETTER MOHAN RAY: Sir, I beg to support this amendment and my reasons are these. There are some very stringent provisions embodied in sub-clauses (*1*) and (*2*) of clause 13. Clause 13 (*2*) says that if any creditor fails to comply with a notice under sub-clause (*2*), the Board if so empowered under section 7, may pass an order in writing declaring that the amount of any debt due to him from the debtor on the date of such order shall for the purposes of this Act be deemed to be the amount stated in the statement of debt submitted by the debtor: that is to say, the creditor is entirely at the sweet mercy of the Board and he will be punished for his inability to comply with the notice.

There may be a hundred reasons why he may be prevented from appearing before the Board. It is indeed a very stringent provision that the amount of debt mentioned in the statement would be accepted, therefore, I submit that the last two lines, *viz.*, "and such order shall not be questioned in any Civil Court or in any manner"—should not be retained. The power given to the Board in clause 13 (*2*) depends upon the certificate of notice—the jurisdiction entirely depends upon this, and it would be *ultra vires* for the Board to pass such an order without seeing the certificate of notice. If the Board does not follow the procedure laid down in section 13 the proceedings will be illegal, and it will greatly prejudice the case of the creditor. This sort of stringent provision has been made in every clause against the creditor and there should be some remedy. It may be said that there is a proviso that if he can show sufficient reason as to why he was prevented from complying with the notice the Board may extend the time. But, as the Hon'ble Member announced the other day here, we have to remember that these Boards will comprise of men in the villages who have little or no education at all and these men will be empowered to administer the law. For these reasons I think the proviso should be omitted.

Rai Bahadur AKSHOY KUMAR SEN: Sir, while supporting the motion I beg to submit that even under the Public Demands Recovery Act there are provisions in sections 36 and 37 to the effect that if a certificate is issued by fraud or a certificate is obtained in contravention of any of the provisions of that Act, then the Civil Court has certainly jurisdiction to set that certificate aside. Although the Public

Demands Recovery Act is a special law, the legislature thought it best to give the Civil Court jurisdiction when the matter is vitiated by fraud. If any order is vitiated under clause 13 of this Bill then I submit the Civil Court should be given jurisdiction to set aside the order or to declare that the order or award is vitiated by fraud. As such a provision is to be found in the Public Demands Recovery Act and if orders passed under clause 13 are illegal owing to non-observance of certain provisions of the Act, then the jurisdiction of the Civil Court should not be barred by a clause like this—"any such order shall not be questioned in a Civil Court or in any manner." My submission, therefore, to the Hon'ble Member is that he will kindly consider whether the Civil Court will be debarred from taking cognisance of such cases in which an award passed by the Board under this clause is found to be vitiated by fraud or passed in contravention of any of the provisions of the Act.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, Babu Kishori Mohan Chaudhuri has propounded an extraordinary proposition before this House. He has said that if a creditor has filed a suit before a Civil Court and then if the debtor has filed an application before the Board, the creditor should not be compelled to appear before the Board. That is a thing which goes against the whole principle of the Bill and I do not think his objection has any legs to stand on.

As far as Babu Khetter Mohan Ray's argument is concerned, I would like to draw his attention to the fact that the creditor will not be in a disadvantageous position because if he had genuine and *bona fide* reasons for not being able to comply with the notice, all that he has got to do is to appear before the Board and let it know the reason why he could not submit the statement. But only when he deliberately fails to comply with the provision, that this clause will apply and the debt as mentioned by the applicant will be certified as a debt.

Now, Sir, in the Central Provinces there is a similar provision which is more drastic. The corresponding provision in the Central Provinces Debt Conciliation Act, *viz.*, section 8 (*2*), provides "every debt of which a statement is not submitted to a Board in compliance with the provisions of sub-section (*1*) shall be deemed for all purposes and all occasions to have been *duly* discharged." In the Punjab they have got a similar provision, but ours is in a modified form which compels a creditor to put in a statement.

Rai Bahadur Akshoy Kumar Sen's alleged analogy with the Public Demands Recovery Acts does not stand altogether. There is no question of fraud in this case. It is purely a question whether a man has put in a statement or not. In view of what I have said, I oppose this amendment.

The amendment was then put and lost.

Mr. PRESIDENT: Order, order: the Council stands adjourned till 2 p.m. on Thursday, the 5th December.

Adjournment.

The Council was then adjourned till 2 p.m. on Thursday, the 5th December, 1935, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Thursday, the 5th December, 1935, at 2 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHOWDHURY, of Santosh) in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers and 87 nominated and elected members.

STARRED QUESTIONS

(to which oral answers were given)

Measurement of boats and sampans in Chittagong.

*10. **Haji BADI AHMED CHOWDHURY:** (*a*) Is the Hon'ble Minister in charge of the Local Self-Government Department aware that there is a difference in measurement of boats and sampans by the District Board and the Port Trust Office, Chittagong?

(*b*) Have the Government disposed of the reference made by the Chittagong District Board regarding the same?

(*c*) Are the Government considering the desirability of directing the District Board, Chittagong, to make their measurement uniform with that of the Port Trust?

MINISTER in charge of LOCAL SELF-GOVERNMENT DEPARTMENT (the Hon'ble Sir Bijoy Prasad Singh Roy): (*a*) Government have no information.

(*b*) No reference has been received by Government from the Chittagong District Board.

(*c*) Does not arise.

Bansabati railway station.

*11. **MUNINDRA DEB RAI MAHASAI:** Will the Hon'ble Member in charge of the Public Works (Railways) Department be

pleased to state when the raised platform and waiting room for ladies are likely to be constructed at the Bansabati railway station on the East Indian Railway?

MEMBER in charge of PUBLIC WORKS (RAILWAYS) DEPARTMENT (the Hon'ble Sir John Woodhead): The work of providing a raised platform at Bansabati railway station on the East Indian Railway is nearing completion and is expected to be finished by the end of December, 1935. The provision of a waiting room for ladies depends upon funds and the needs of more important stations.

Calcutta Electric Supply Corporation.

***12. Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur:** (*a*) With reference to the answer to my starred question No. 55, dated the 19th August, 1935, will the Hon'ble Member in charge of the Commerce Department be pleased to lay on the table a statement for the last three years showing separately the total number of premises in which direct current and alternating current have been or had been supplied by the Calcutta Electric Supply Corporation, Ltd., during the year under review?

(*b*) What is the approximate cost for generating direct current as also alternating current per 1,000 units?

MEMBER in charge of COMMERCE DEPARTMENT (the Hon'ble Sir John Woodhead): (*a*) Figures for the total number of premises to which direct current and alternating current were supplied are not available, but a statement is placed on the table showing the total number of units of D. D. and A. C., respectively, supplied by the Calcutta Electric Supply Corporation to consumers during each of the three years 1932, 1933 and 1934.

(*b*) The attention of the hon'ble member is invited to the reply given to (*b*) of his starred question No. 55 of 19th August, 1935.

Statement referred to in the reply to clause (a) of starred question No. 12, showing the total number of units of D. C. and A. C., respectively, supplied by the Calcutta Electric Supply Corporation to consumers during each of the three years 1932, 1933 and 1934.

	1932.	1933.	1934.
Units D. C. ...	63,468,184	62,077,214	66,143,736
Units A. C. ...	121,666,140	128,074,234	163,792,931
Total ...	185,134,324	190,151,448	229,936,667

GOVERNMENT BUSINESS

LEGISLATIVE BUSINESS

GOVERNMENT BILL.

The Bengal Agricultural Debtors Bill, 1935.

(Discussion on the Bengal Agricultural Debtors Bill, 1935.)

Mr. SARAT KUMAR ROY: Sir, I beg to move that in clause 13 (2), in the last line, after the words "or in any manner," the words "other than that provided in this Act," be added.

Sir, in the proviso to sub-clause (3) of this clause, the Board or the appellate authority has been given power to vary or reverse an order of the Board passed under section 13 (2). So this Bill provided for enabling any party——

Mr. H. P. V. TOWNEND: Sir, in order to shorten the debate I may, at this stage, state that Government are prepared to accept the amendment.

The amendment was put and agreed to.

Mr. S. M. BOSE: Sir, I beg to move that clause 13 (3) be omitted.

Sir, under this clause 9, liberty has been given to an application being made, either by the debtor or by the creditor, so that both may take advantage of the provisions of this Act, when passed. I have not the slightest doubt that a large number of creditors will take advantage of the Act. Under clause 13 (2), if a debtor applies, notice is sent to the creditor asking him to file a statement. If he fails to do so within a certain period of time, then under the provisions contained in this sub-clause, the debts stated by the applicant debtor in his application shall be taken as admitted, even though the debtor might have failed to include certain items of his debt. But now comes the most extraordinary provision in sub-clause (3), viz., where the creditor is the applicant, and a notice under the provision of this Bill is served on the debtor asking him to submit a statement of his debts. But if the debtor fails to comply with the notice, the Board shall dismiss the application. This is one of the most unusual things ever heard of. Where a debtor applies, and the creditor defaults, the debtor's claim is admitted; but where the creditor applies, and the debtor defaults, the plaintiff's case is dismissed. I do not know whether one has ever heard of a case as yet in a civilized society where a plaintiff's suit is to be dismissed, because the defendant chooses not to appear. Sir, this

is, as I have already said, an extraordinary piece of legislation, and I would ask the Hon'ble Member to say whether any such provision exists in his favourite Punjab or Central Provinces Act or anywhere else in the world. One has heard of archaic systems of law where the State intervenes in the guise of an arbitrator and the plaintiff has to drag the defendant before the State Judge to enable him to act as arbitrator. One fails to understand the justice, equity or the principles of this extraordinary provision. One should have thought that where the creditor applies and the debtor does not appear, on the analogy of the provision in clause 13 (2), the amount stated in the application should be taken to be correct and should be binding on the debtor. But no, the rule here is just the opposite, viz., the debtor can get the creditor's application dismissed by simply ignoring it. The logical course would be *either* to allow both the debtor and the creditor to apply and apply the same rule to both of them or to bar out the creditor by not allowing him to apply at all under this Bill. That I could have understood. When under clause 9, both the creditor and the debtor are at liberty to apply, one really fails to understand how the Hon'ble Member can expect us to support this clause. I hope, Sir, that he will not abuse his power but listen for once to reason, to logic, to commonsense which, I emphatically say, are on our side. I also say that there is a deep feeling in the matter beyond any shadow of doubt, and I do hope and trust that he will listen to the claims put forward by us.

Babu JATINDRA NATH BASU: Sir, this Bill has been brought forward by Government in response to a widespread demand for relief. That demand has been urged on behalf of the agriculturists who are encumbered with debts. We have not, up to the present moment, heard that the creditor or lender has come forward before Government for any relief. What is now proposed is to impose a particular kind of relief on them. So far as the debtor is concerned, the debtor is given the liberty to go before one of these Boards to have his debts adjusted, and the Boards are given powers to adjust them in a certain way. But it goes further, and seeks against its own nomenclature to relieve him not only of his indebtedness, but also to relieve persons who lend money. I am surprised at the manner in which the Bill has been drafted. As Mr. S. M. Bose has pointed out, it is an extraordinary piece of drafting, and those that are conversant with the administration of the law—and I am talking not only of the present day but of all times during which any system of law was prevalent—will admit that the way in which this Bill has been drafted has set such a new example that has no precedent and that it will never be taken as a precedent by future administrators. Anyone who has any actual experience of human affairs, not only in the Courts of law, but also in the settlement of disputes between the creditor and the debtor, will immediately see the impracticability, if not the absurdity, of many of these provisions.

This Bill has come, and it is likely to go through, but whether it will be an ornament or a disfigurement on the statute book, it is for posterity to judge. Sir, everybody is agreed that some sort of relief should be granted to agriculturists who are indebted, and there can be no objection to provisions, reasonably put forward, for such relief, but why should there be a provision that a creditor should come forward even when the debtor does not, especially as he is not going to get any relief. What he has been given is a dismissal of his application if the debtor does not choose to come forward and places his affairs before the Board. Sir, this is a most extraordinary kind of procedure, not only a novel one, but a thing which is unheard of in any system of law or in any system of adjustment of human affairs. Again, the clause, later on, in this Bill which reserves to persons the right to seek their remedy before any other tribunal, is also so vaguely worded that it is exceedingly difficult to actually know what it means, and that there would be any amount of controversy before the Courts—a controversy which it is probably one of the objects of the Bill to avoid. This Bill has been drawn in such a manner that it will lead to innumerable controversies about interpretations of its various provisions. Then, Sir, the word "dismissal" has a meaning which is absolutely unmistakable. The claim is dismissed, that is to say, the relief that is sought is not given. Along with it, it is not provided that he will be at liberty to seek relief in a Court of law. A creditor presents his claim before one of the Boards, and serves a notice on his debtor; the debtor does not appear on the date fixed for the hearing of the matter; the result is that his claim is dismissed. It might be that by that time his claim might have become barred by the ordinary law of limitation. A dishonest debtor might in the meantime execute a voluntary transfer in the way of a deed of gift or a *benami* sale, as, we find, very often happens in the case of such debtors. It is only during the pendency of proceedings by a debtor that transfers made by him may be challenged, but where the proceedings are made by a creditor and the application of the creditor is dismissed, where is the relief? Sir, I would draw the attention of the Hon'ble Member and of the House first of all to the fact that it is an uncalled for provision, especially as creditors did not ask for it; secondly, there was no public demand nor any recommendation from any interested body that there should be this provision. Further, the dismissal may give rise to various difficulties by way of shutting out the creditor from relief to which he may in the ordinary course be entitled. Besides, Sir, it is no doubt provided that he will be awarded the costs, but the presentation of a claim, the service of notice, etc., will entail a much larger amount of cost than the Board is likely to award. There will be the usual service fee allowed by the Board under the rules for serving the notice, though, in actual practice, the cost for service is likely to exceed the amount sanctioned. The travelling allowance and other expenses of the process-servers, and the preparation of

the statement of claims, etc.—all these will not be taken into account in making the award. Further, it is not specifically provided that where a claim is dismissed, whether the creditor will have power, when he goes before one of the ordinary Courts for the recovery of his claims, to add such costs to his claims. All these difficulties are bound to arise. Anyone with a practical knowledge of the actual daily experience of these things will tell the Hon'ble Member that that is what is likely to happen. I would, therefore, support the amendment moved by Mr. S. M. Bose.

Maulvi SYED MAJID BAKSH: The amendment that has been moved by Mr. S. M. Bose and later on supported by Mr. Jatindra Nath Basu ignores a very salutary provision which has been included in this Bill. Mr. S. M. Bose complained of something as archaic in this Bill, but I am constrained to think that even in his logic, common-sense, and principles of equity, there was more that was archaic than what is in the Bill itself. Sir, this Relief of Indebtedness Bill was conceived, so far as I understand, in the interest of the settlement of debts of agriculturists. This is the first principle that my friend should bear in mind. Now, that can be done in two ways. In the majority of cases, and I should say in a very large majority of cases, it would be done at the instance of the debtor. We cannot, however, shut our eyes to the fact that it is also possible that creditors may come forward for settlement of their claims. Therefore, the framers of the Bill could not shut the door against them, and that is the reason why this provision has been inserted. Sir, my friends spoke as if somebody was being compulsorily dragged into the matter. The creditor may apply, but it must be remembered that only in that case he will apply, when he finds that it is convenient for him to do so. No creditor will come before the Board with the possible chance of his claims being dismissed. He will do so only when he is certain that the debtor will come to the Board. In a word, he will do so only when he knows for certain that he will gain by doing so, and he will make a choice either to go to the Board to save his cost or he will go to the ordinary Court of law if he knows that he will not be able to get his claims settled by the Board. Of the two courses, he will certainly adopt the more convenient one. That being so, the next thing that comes to our mind is that no arbitration can be achieved without a compromise between the parties. If the creditor appears before the Board, but the debtor does not, arbitration is out of the question. In that case, the Board cannot keep his application pending for a long time, and the only alternative before the Board is, therefore, to dismiss it, and the Board in doing so recognise the claims of the creditor to costs.

Babu JATINDRA NATH BASU: But what about the debtor's claim when the creditor does not appear?

Maulvi SYED MAJID BAKSH: In that case, there are provisions later on by which the creditor will have to come, otherwise his claims will be barred. Therefore, he will have to choose between the two alternatives, and must come before the Board, whereas if the creditor applies, and the debtor does not come, it may be that it would be inconvenient for him to arrive at an amicable settlement with the creditor. So, if the debtor does not appear, there is no other alternative but to dismiss the application. My friends are mistaken in the matter as these Boards are not Courts of law but simply Boards for arbitration. In a Court of law, if one party appears and the other does not, there is provision for an *ex-parte* decree, but there cannot be an *ex-parte* decree in this case, as it is not a case before a Court of law, but one before a Board of arbitration. No other provision except that of dismissal is therefore possible. This is a well-known principle of law, and my friends being eminent lawyers, know that there is no injury which can be compensated by costs awarded. That is one of the established principles of law which, I hope, my friends will recognise. There is no injury in law that cannot be compensated by cost. That provision has been made in accordance with law and it is not a bad law. It is absolutely in accordance with the legal procedure that if a man is injured he should be compensated by cost; that is the real principle, and I hope my friends will agree. That has been done.

Secondly, there is a proviso to cover the case of a creditor who finds that his application has been dismissed. Under the proviso he can yet have the remedy by applying for a review or by appearing in person. Supposing it is dismissed for some reason or other and the debtor is prevented from coming, the creditor may make his application after some time if he finds that the debtor is willing to appear before the Board for arbitration. In that case provision is made for the creditor to appear either before the appellate officer or to apply for a review. Under both these provisions he can have his application revived. If it is the intention not to have arbitration but to use the Board of arbitration just as the machinery of the Court of law, it will be repeating the same provision as it exists. It would be absolutely redundant; it would be creating another Court having same jurisdiction. I hope my friends will see the point and agree with me that the provision is very salutary.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Two lawyers have explained their points of view. I want to explain to the House the question from the point of an ordinary man. The very title of the Bill appears to show that it is an Agricultural Debtors Bill. It means that the debtor is to come before a Board like this and get a settlement of all the debts including his arrears of rent. The whole affair has been complicated by the introduction of the arrears of rent as debt. No debtor will ever dare to come before a Board like this

to seek relief not only for ordinary debts but for debts due to arrears of rent. If Government thought fit to exclude from the operations of this Bill the arrears of rent——

Mr. PRESIDENT: Why do you bring in this matter?

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Because it is necessary——

Mr. PRESIDENT: Are you going to start from the A, B, C of the Bill again? (Laughter.)

Nawab MUSHARRUF HOSAIN, Khan Bahadur: I am simply pointing out to you and through you to the House that——

Mr. PRESIDENT: Nawab Sahib, you cannot go back. I tell you that very definitely. Please speak on the amendment.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Yes. The debtor will be shy to go before a Board where he will have to lay bare all the debts that he owes to different people. When a creditor goes to a Board for relief, he exposes the debtor not only to the attack of himself but to the attack of the different creditors of his including the *zemindar*. So the debtor may be shy in coming before a Board just as a creditor does to seek relief. But when the debtor comes knowing the consequences of his action, he ought to be given relief; the case of a creditor is quite different. It is not a creditors' Bill but it is a debtors' Bill. If the creditor ever cares to come, he may come out of wickedness and not for any real relief; if the debtor does not come to the Board to expose all his debts, he has to pay off the entire debt which he does not like to expose and he should not be put into an awkward position. So I think if the creditor out of wickedness comes to the Board and if his case is dismissed, no wrong will be done to anybody. Under the circumstances, I believe my friends are not right in saying that the non-appearance of the debtor will prejudicially affect the interest of the creditor. The creditor has got the Civil Court open before him if the debtor does not come to the Board. Why there should be such a difficulty for the debtor I do not understand. I think when a creditor finds that the debtor is not appearing before the Board he should not bother his head further about the case. In the circumstances I believe the provision that has been made is not wrong, and should be accepted.

Babu KISHORI MOHAN CHAUDHURI: I fail to understand why there should be any objection to the same sort of treatment being accorded to both the debtor and the creditor. A debtor may not come in two cases: In one case when there is some possibility of his paying his debts amicably to one creditor and not to another. If he is an honest debtor there will be no case for the creditor to come before a Board. The other case is when the debtor finds that it is not possible for him to pay his debts amicably or that it is best for him to endeavour to evade the claims of the creditor, he would try to enjoy the property as long as he could. In the latter case, what would be the remedy? The Nawab Sahib thinks that he may go to a Civil Court, get a decree and then execute it or get him arrested or try to bring him to the Insolvency Court. When the Board really sees that he is evading payment, some arrangement may be made by it for declaring him insolvent or make some arrangement for the payment of the debt. But the creditors should not be allowed to go to Civil Court and spend a lot of money when there may be such difficulties. The real question is whether it is intended to do a thing for the relief of the debtors by amicable arrangement. If amicable arrangement is possible, do it by all means, but if it is not, ordinary remedies ought to be allowed to both sides equally. Mr Bose has said that it may be that a creditor may come at the last moment and if then his application is dismissed and becomes time-barred, what will be his remedy? Would he not be allowed an opportunity of realising his money? When a creditor sees that the debtor is not doing anything to pay off his debts by instalments or is going to sell his property either he must go to the Board for an amicable settlement or anyhow compel the debtor to come to a certain arrangement. In the ordinary course of law what is done? If an *ex-parte* decree is made in favour of a debtor against a creditor, why should such a thing be not done for the benefit of the creditor? If anything can be done by amicable arrangement, it should be beneficial to both the creditors and the debtors But we have some apprehension if these amicable arrangements will prove a success. I think the creditor ought to be protected. If he fights shy or if for the disadvantageous position in which he may be placed he closes his moneylending business, it will be a very hard thing for the debtor. The *raiyats* will not be benefited, rather they will be ruined if they do not get timely help from the creditors or from the *zemindars* or from their friends. Our utmost endeavour ought to be for an amicable settlement and to see that one party does not get an undue advantage over the other. In this view I say that there is no necessity for retaining the clause; it ought to be deleted.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, Mr. S. M. Bose and Mr. J. N. Basu have waxed eloquent over the injustice, inequity,

and unreasonableness of this provision. Sir, I would appeal to the House to judge dispassionately and impartially whether justice, equity, and reasonableness is on our side or on the other side. (A VOICE: On your side.) Sir, I would ask the gentlemen who have supported this amendment to consider just for one minute, beyond the wording of this provision, what the effect is going to be by forcing a debtor to appear before a Board. Supposing you compel him to appear before a Board, what is the next step before you? Is there any provision in the Bill by which you can compel him to come to an agreement? Is there any provision in the Bill by which you can compulsorily sell him out? Is there any provision in the Bill by which you can penalize him in any way whatsoever? There is none. The scheme of the Bill, if anything, is that if there is any mild form of compulsion made in the Bill, it is on the creditor, but there is no compulsion at all on the part of the debtor. What will be the effect if you force him to appear before a Board, a person who is unwilling to come to a settlement with his creditors? Suppose you make him appear before the Board and terms are offered to him and he refuses point blank! He comes to the Board with all his documents from a long distance, incurring a lot of expenditure perhaps, and then he says "I do not accept any compromise" and walks away to his house. What can the Board do in such a case? Is there any provision in the Bill by which you can penalize him? There is not any such provision, and the result of your doing so will be that the poor creditor is harassed and made to expend money with the result that in the end he gets no remedy. Is it worth while under those circumstances to make him go through all this trouble and harassment? Is it not better at the very outset to dismiss the applications of those people who are not prepared to come to an amicable arrangement? It is no use going on with cases where the debtor is not prepared to co-operate and come to any settlement. It is far better, therefore, not to make a large number of people appear before the Board, for them to say in the end: "Well, we are not prepared to compromise." But supposing that such a provision is there, what will be the effect of it? The effect will be either to dismiss the applications or to allow such people to come along; but even then you don't gain anything. Therefore, I maintain that the scheme of the Bill is such that this is the most logical, fair, reasonable, and common-sense point of view that has been provided in the Bill: it is the only thing that has been done to do away with the applications of persons who are not prepared to come to any reasonable compromise, so that those people who are willing and prepared to compromise should not be kept waiting and get delayed. We want to get on with such people and not deal with men with whom business is not possible. Put this question to any businessman, and his answer will be that he is not going to waste his time with men who do not want to do any business. So, why go on with the applications of such

men? In view of the above observations, which I have submitted, I hope——

Babu JATINDRA NATH BASU: I do not see why it should not be possible to do so.

The Hon'ble Khwaja Sir NAZIMUDDIN: I am sorry, Mr. Basu has missed the point altogether. By bringing the debtor, who is unwilling to come to a compromise and unwilling to do any business, before a board it would be sheer waste of time of the Board, of the creditor, and of everybody else, if he says: "No, I am not prepared to come to any compromise." So, it is far better to get out of the way the applications of such persons as are not prepared to discuss business, but to go on with the applications of those who are ready to make a compromise. Now, the question may arise as to why we should penalize the creditor. In the Bill we have provided only for a very mild form of compulsion in the case of creditors. It is indeed a very mild form of compulsion. May I, Sir, through you impress upon Mr. S. M. Bose that the very mildest form of compulsion that can be used has been used in this way, and I may say that every person who has discussed this question and written on it before the introduction of this Bill has recommended much more drastic compulsion for the reduction of debt. But Government have put in only the very mildest form of compulsion that can be put in, everywhere in this Bill. Except in clause 20, there is nowhere in this Bill any action recommended against the creditor unless there is a certain percentage of voluntary agreement. Therefore, Sir, in this mild form of compulsion that has been put on the creditors in certain circumstances it is necessary to make their appearance necessary. In the case of debtors in the scheme of this Bill no compulsion can be enforced, and it is absolutely futile to make these people appear before the Board.

Rai Bahadur SATYA KINKAR SAHANA: Mr. President, Sir, as I am painfully aware of the fact that a sort of mentality prevails in some part of this House, which has been forcefully expressed by the Bengali saying "বকো আর বকো, কানে দিয়েছি তুলো" I think it is mere waste of breath to adduce any reason for the deletion of this sub-section. We are all normal human beings, and normal reason requires that there should be one law for all in the province and that there should not be any discrimination in this matter. But here, Sir, we find that what is sauce for the gander is not sauce for the goose. When a debtor appears before a Board, he is given relief and his application is entertained, and if the creditor does not appear before the

Board, his application is granted and his case is decreed, but when the creditor comes before the Board he is not given that relief and if the debtor does not appear then his application is dismissed. The Hon'ble Member has put forward some reasons for this view and has shown us another side of the shield, perhaps, and it may be that there is much reason in that; but if that be the case, why allow the poor creditor to approach the Board at all? Why not take away that power from him and why not make it possible for the debtor only to do so? Why should the creditors be harassed by having to approach the Board, and when their applications are dismissed they should be compelled to seek relief in the Civil Courts? Why all these tedious operations through which they shall have to pass? Why not take away the power of the creditors to approach the Board? I think that you should either delete this sub-clause or take away the power of the creditors to approach the Board. That will be the best and most reasonable thing to do. If that sort of discrimination be intended to be put into the law—which I cannot think to be if of course the object of the Hon'ble Member be not to give hard knocks at the confidence of the public in British justice—I think he should think over the matter and either take away the power from the creditors of approaching the Board or give them the same advantage as has been given to the debtors.

Babu SATISH CHANDRA RAY CHOWDHURY: Sir, when we were listening to the interesting speech of the Nawab Sahib on this amendment we were all curious to know whether Government and the Nawab Sahib were both sailing in the same boat. Now, Sir, the Nawab Sahib was telling us that it is a debtor's Bill, and I was wondering whether the Hon'ble Member in charge's reason for opposing the motion would be the same. But, Sir, I may say that the Government has gone a step further, and the cloven foot that was so long hidden has now come out fully before the public gaze. I admire the Hon'ble Member for the legal argument which for once he has used by saying that there is no other provision in the Bill whereby a debtor could be compelled to settle a debt. The Hon'ble Member seems to think that by making the statement that there is no such provision in the Bill he has been able to put us out of court. This legal argument does not avail at all because the main point is whether the Bill is based on the principle of compulsion. We will undertake to show him that as a matter of fact compulsion is really the essence of the Bill—compulsion on one side or the other. Now, Sir, the question is whether in the absence of a party or in the absence of an agreement with him you ought to force him to accept anything. The principle of law is that in the absence of any party you should not force a thing on him or into him. That is the principle of the British law of justice to which we have been so long accustomed, although there are attempts made

now and then to reverse this principle. Here, Sir, in the case of creditors we find as a matter of fact that in many cases there will be no agreement between them and the debtors. When the debtor appears for settlement of his debt before a Board, the only condition is that 40 per cent. of the creditors must agree in making the settlement binding on all. If 40 per cent. of the creditors whose interests may be quite adverse and positively inimical to the particular creditor in question, if 40 per cent. of such creditors can be made to agree for reasons of their own, to a settlement, and a certain settlement is arrived at on a certain basis, then the other creditors, whether they are prepared to settle their debts before the Board or not, may be made to abide by the decision. Is that not compulsion, Sir, and compulsion with a vengeance? You do not care to listen to the other creditors who may have a say or objection to put forward. For instance, there may be 50 men concerned in the debts of a single debtor. Out of these 50, 30 may have advanced a loan within this economic depression period and they might have very good reason to accept the principal only minus the interest but, on the other hand, the other 20 may be men who advanced the loan some 20 years ago and who did not receive anything from the debtor since the loan was given. Therefore, their case is entirely different from the case of those who advanced the loan during the present crisis. Now, is it at all just or equitable to make these creditors accept an agreement to which they were not a party, simply because 40 per cent. of the other creditors have agreed to it on grounds suitable to themselves only? Even leaving aside this question of 40 per cent. or 60 per cent., what has the Hon'ble Member got to say about this drastic provision? It is only the sense of fairness of the Board which will prevail in the matter. If the debtor makes an offer and if the particular Board considers that offer a fair offer, then there is an end to the matter and the creditor must accept it. The question is whether it will cause injustice to a particular debtor if he is required to submit to the same rule of law as the creditor. I think it will not. Look at clause 20. There you shut the creditor out of the Law Court for ten years and may be sometimes for ever as they can't get any remedy until all the other creditors who have got their award are satisfied. So, to say that there is no compulsion in the Bill with regard to creditors is not correct, for you are practically deciding the case against the party in his absence. No possible harm can be done if the same justice is meted out both to creditor and debtor. The principle of compulsion being well recognised in the Bill should apply to both sides equally. If the award is once made, you can make it binding on the party.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, may I just make one point clear? I made it quite clear that there is no provision like that on which Mr. Ray Chowdhury is arguing.

Mr. PRESIDENT: Mr. Ray Chowdhury was trying to prove that the Hon'ble Member's statement is wrong.

Mr. H. P. V. TOWNEND: We have not yet come to that point.

Mr. PRESIDENT: If I remember aright, Mr. Ray Chowdhury challenged the statement of the Hon'ble Member that there is no such provision in the Bill. I would allow him, if he could, to substantiate it.

Babu SATISH CHANDRA RAY CHOWDHURY: In support of my contention I may say that the substance of what the Hon'ble Member said is that if a party does not appear before a Board, the Board can do nothing, no compulsion can be exercised, whereas the creditors are forced to come before a Board and become parties to an agreement. Why not then in the same way in the case of debtors they be made party to a so-called agreement?

Babu JITENDRALAL BANNERJEE: What is the provision for debtors?

Babu SATISH CHANDRA RAY CHOWDHURY: What is good for the gander is also good for the goose. Sir, we have heard much about the wickedness of the creditors. One Hon'ble Member has characterised the creditor as such in support of his astounding proposition simply because they seek legal remedy. What I am attacking is the principle of the matter. If a party is not present before a Board, how can you make him a party to the agreement? You have already made a provision to force a creditor to become a party to an agreement. So, your Bill for constituting a Settlement Board is a misnomer; there is no settlement practically between the parties. You have reserved power to the Board to settle debts no matter whether one of the parties would agree to it or not. You say if the debtor agrees, there is agreement. We have never heard of any agreement being arrived at when one party does not agree. Has the Hon'ble Member, whose legal training was obtained in England, forgotten that without *vinculum juris* there can be no legal agreement? The whole principle is that you have not provided in your Bill at all that two parties must agree before any amicable settlement could be arrived at. The principle laid down is that there can be an amicable settlement even though one party is not agreeable. (MAULVI SYED MAJID BAKSH: There is such a provision in the Civil Procedure Code.) Supposing you omit this clause, will there be any real hardship? That ought to be the real criterion. Why not in your Bill the same kind of justice to both the parties? Why not provide if the creditor applies and the debtor does

not turn up nor agrees, in that case the Board will be entitled to pass an award according to the statement made by the creditor. If in the Civil Courts in the absence of one party the Court comes to a decision on the statement of the other party, the only remedy for the aggrieved party is to apply for a review and to get the thing settled. May I submit, Sir, that although the Bill is intended to afford relief to the agriculturists, by making similar provision for both, that relief is not denied to him. If he is himself a party to a settlement made by the Board, then there the matter ends. But when the creditor applies, the remedy for him is to appear before the Board and plead his inability and the Board will take into consideration all that he has to say. The decision will in 99 cases out of 100 be favourable to the debtor. How then is relief denied to him? But if he denies himself the relief by not appearing before the Board, even then you want to afford him relief. Is it on the ground of expediency that it is proposed to be done? I understand that the Bill is based on the ground of expediency and that you are about to abrogate all principles of law; you will give an agriculturist all opportunities to avoid his debts. We may just see what would be the result if the creditor is not given the same remedy. It may arise in this way: As I said the other day, after the Bill is passed, the debtor will not easily appear before the Board. He may try to avoid the whole burden of his debts being placed on his shoulders at once and may be biding his time. The creditor again will be nervous to go before the Civil Court for fear of incurring costs on Court-fees knowing that he will certainly be checkmated by an application made before the Settlement Board by the debtor; he will be in a state of suspense all the time. In spite of the earnestness of the Hon'ble Member in charge and some of the members to see the Boards working with enthusiasm, my suspicion is that everything will be in a state of suspension for a time. If in such a state of things, a creditor does not appear before the Settlement Board, the result will be that the debts will be swelling up and this will not at all be favourable to the debtor. But if you allow a creditor to come in, then of course full justice should be done. If there is a provision that the matter will be settled in the absence of the debtor, then the debtor also will be anxious to appear before the Board at the earliest possible opportunity and have the whole matter settled once for all. So, Sir, on the question not only of principle but also of expediency, it is just and proper that the same opportunity should be given to both parties, viz., the creditor and the debtor, and the matter ought not to be allowed to drag on and operate as hardship on one party leaving the other party entirely untouched.

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur: Sir, I have listened with interest to the cogent arguments put forward by the Hon'ble Member in charge. I admit that the Bill has been

drafted in a most mild form and that compulsion has also been introduced in a milder form. But I am not convinced of the justification that has been given for the preferential treatment between a debtor and a creditor. When the creditor is the applicant and the debtor does not appear, the case will be dismissed, but when the debtor is an applicant, and the creditor does not appear, his case will be decreed *ex-parte*. This is very strange. Under the present law either in the Civil or in the Criminal Courts there is no provision that a plaintiff's case will be dismissed for non-appearance of the defendant. Even in the Criminal Courts, the accused is forced to appear and only when the complainant does not appear, his case is dismissed and not otherwise.

Sir, with regard to the remark made by the Nawab Sahib that the creditor will apply only from wicked motives, I deny it altogether. As a matter of fact, the creditor will only apply when he finds that the debtor's position is such that he is not able to pay all his debts. On the other hand, the creditor knows fully well that if he applies before the Board, he will not get his claim decreed in full, but there is every chance of the amount of his claim or of his interest being scaled down. So only for the purpose of giving relief to the debtor, the creditor will apply, and I do not think there can be any motive on the creditor's part to apply out of wickedness to expose the debtor to the public. There may be one creditor and one debtor and what will happen? My friend the Nawab Sahib said that in order to expose the debtor with regard to all his debts, the creditor will apply. But how can this be applied where there is one creditor? So his theory is untenable. Further, I would like to submit that both in the Punjab and the United Provinces there is no such difference of treatment between a debtor and a creditor applicant. I fully agree with my friend, the Rai Bahadur, when he says that there is no need for any provision compelling debtors to apply. As the title of the Bill is a debtor's Bill it is better that the debtor be given this opportunity and not the creditor. If this be done all question will be solved automatically. At the same time there will be no difficulty in the working of the Bill and there will be no hinderance. The debtor will at the same time get all the relief which it is intended to give him in this Bill.

Maulvi TAMIZUDDIN KHAN: Sir, Rai Bahadur Satya Kinkar Sahana thinks that he has got a monopoly of reason and Mr. Satish Chandra Ray Chowdhury's opinion is that all the logic is on his side; but I do not know where their logic and reason will lead them to. The proposal before the House is that clause 13 (*3*) be altogether omitted. Now, their objection against this clause has also been expressed during the course of the discussion on this motion and that objection is that the Board should not have been given the power to pass an order against the creditor to the effect that if he does not appear even after receiving

a notice, the amount stated in the debtor's application should be the amount for which the debtor is liable to the creditor. That is a provision to the detriment of the creditor. But, Sir, if sub-clause (3) is read carefully, it will be seen that there a chance is given to the creditor to show either before the Board or before an appellate officer that he did not actually get the notice and so he could not appear before the Board. So they can reopen that question before the Board, or before the Appellate Officer as they may choose to do. But if sub-clause (3) be omitted altogether, that remedy also will be denied to the creditors. Therefore, my submission is that by omitting sub-clause (3) altogether, as this amendment seeks to do, the supporters of the motion will not be serving the best interests of the creditors.

Again, Rai Bahadur Satya Kinkar Sahana has said that this is a piece of discriminatory legislation, that it provides one thing for the creditor and another for the debtor. I submit, Sir, that there is bound to be some difference. They want that both the debtors and creditors should be dealt with equally. How can that be? The purpose of this legislation is to give relief to the debtor in the first instance, and if that relief is to be given to the debtors, where is that relief to come from? The relief can come only out of some sacrifice on the part of the creditor. Without that sacrifice no relief can actually be given to the debtors. This is the question in point. My friend wants that 16 annas relief be given to the debtors as well as to the creditors. I submit that that is absolutely impossible, having regard to the purpose for which this legislation has been introduced by the Government. As this Bill is mainly for the benefit of the debtor, the debtor cannot be compelled to come before the Board if he is actually unwilling to accept the arbitration of the Board. As has already been pointed out, how can there be any settlement without the debtor appearing before the Board? Will it be of any effect if anything is decided in the absence of the debtor? If the award is made in the absence of the debtor, how will that award be operative? It is absolutely futile to compel him to appear before the Board. I think, in spite of the claims of the Rai Bahadur and Babu Satish Chandra Ray Chowdhury, that the logic is on their side, no more illogical provision could be embodied in this measure than what they are proposing. The last speaker also has said that the legislation is discriminatory. He says if you look at the Law Courts, you find the law is the same for the debtor as well as for the creditor. But my friend conveniently forgot that Law Courts adjudicate upon the claims of the various parties. But these Boards are not given the power of adjudicating upon the claims of the parties that will appear before them. Their object is to arrive at a settlement between parties. That is the difference between the functions of the proposed Boards and the function of the Law Courts, and that is why there seems to be this difference between the procedure in Law Courts, and the procedure before the Arbitration Boards. I do not like to

lengthen my arguments any further. The Bill clause is perfectly logical and if my friend wants to omit he will not serve the best interest of the creditor.

Maulvi ABUL QUASEM: Sir, I wish to deal with one aspect of the issue that has been raised. After listening to the speech of Mr. S. M. Bose who was a member of the Select Committee of which I was also a member, and the speeches of Mr. Sahana and Babu Satish Chandra Ray Chowdhury, I feel that the Bill is more in the interest of the creditor than of the debtor. We have been told that this Bill wants to cut at the root of the principle of justice and sanctity of contract, and now we are told that because a debtor is not to be compelled to accept an amicable agreement, a great injustice is being done to the creditor. It takes my breath away. Sir, we have been told time and again, in season and out of season, that this Bill is going to do an amount of mischief to the creditor which he does not deserve, that it is simply cutting at the root of justice, and now we find that the debtors must be compelled to come to an amicable settlement. Else there will be injustice. I do not understand the logic of this. What is the Bill going to do? It is seeking to give relief to the debtors. Suppose the debtor is not bound to accept the agreement, what is the position? The creditor is left with his ordinary remedy at law; he can sell up the debtor; if the unreasonable debtor would not come and have recourse to the relief that has been offered to him under the Bill, the creditor can approach the Civil Court to enforce his claim. How is he prejudiced? The position of the two parties, the debtor and the creditor, so far as this Bill is concerned is not equal. The debtor cannot pay off his liabilities; well, Government propose that he should be given some relief; having regard to the unforseen and terrible circumstances in which he finds himself, his debts have to be scaled down to an amount which he will be able to pay. That is the idea. Why should he be compelled to come before the Board and have an amicable settlement, that is to say, have his debts reduced, if he does not want it? The amicable settlement will be in the interest of the debtor and if he does not like it, nobody need force it upon him. The outcry is against the barring of the jurisdiction of the Civil Court; if in any instance that jurisdiction is left open to a creditor, he should welcome it and not feel aggrieved.

As regards sub-clause (2) some objection has been taken. It is asked; supposing a creditor does not appear and submit a statement of his debts, why should he be compelled to accept the amount given by the debtor as binding upon him? It has been made to appear that this is a new provision of the law. May I draw the attention of the House to the fact that such a provision does find a place in the Bengal Court of Wards Act? Some members may not know that under that Act creditors are invited to submit an account of their

debts; if no such account is forthcoming, the creditor concerned stands the risk of losing his interest or having his claims deemed discharged. Therefore, this is not a new provision. I beg to repeat this is a provision which already finds a place in the Bengal Court of Wards Act. Let members of this Council who think that this is a new-fangled scheme of the Government disabuse their minds of any such idea.

I would submit again that if the intention of the Bill is to give some relief to the debtor, that the debtor's debts should be reduced to an amount which he may reasonably be expected to pay off within a certain time, if that is the idea, and if the creditor as a result, is going to make some sacrifice, or be compelled to make some sacrifice I do not understand how his interest will be jeopardised, if no reduction of his claim is made and he is left free to go to Court, and have his full claim realized? With these words, I oppose.

Mr. H. P. V. TOWNEND: The Hon'ble Member left it to the sense of the House to judge whether or not it was necessary to accept this amendment, in view of the fact that it would be perfectly useless to accept it, for a reason which he put forward. The reason was that there was nothing in the Bill to enable further action to be taken if a debtor were forced to appear against his will. This statement Mr. Ray Chowdhury announced in so many words he would disprove. He has not disproved it: and he did not attempt to disprove it. Now Mr. Ray Chowdhury said when he was starting his speech that he would not yield to the Hon'ble Member in his knowledge of law. If that be so (and I am quite prepared to agree that it is so) we are left with the position that no answer to the Hon'ble Member can be found even by an expert lawyer. That being so, there is no object in continuing the debate. I oppose the motion.

Mr. S. M. Bose's motion being put, a division was taken with the following result:—

AYES.

Banerji, Mr. P.
Basu, Babu Jatindra Nath.
Bose, Mr. S. M.
Chaudhuri, Babu Kishori Mohan.
Ghose, Dr. Amulya Ratan.
Mittra, Babu Sarat Chandra.
Mukhopadhaya, Rai Sahib Sarat Chandra.
Nag, Babu Suk Lal.
Ray, Babu Khetter Mohan.
Ray Chowdhury, Babu Satis Chandra.
Rout, Babu Nanda.
Ray, Mr. Sarat Kumar.
Sahana, Rai Bahadur Satya Kinkar.
Singh, Srijut Taj Bahadur.

NOES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Hassan.
Ali, Maulvi Syed Nausher.
Baksh, Maulvi Syed Majid.
Bal, Babu Lalit Kumar.
Bannerjee, Babu Jitendralal.
Barma, Babu Premhari.
Bazir Uddin, Khan Sahib Maulvi Muhammad.
Basu, Mr. S.
Chakrabarti, Babu Nihar Chandra.
Chanda, Mr. Apurva Kumar.
Chaudhuri, Khan Bahadur Maulvi Nafizur Rahman.
Chaudhuri, Maulvi Syed Osman Haider.

Cohen, Mr. D. J.
Das, Babu Gurupresad.
Ensufji, Maulvi Bur Rahman Khan.
Faroqui, the Hon'ble Nawab K. G. M., of Ratanpur.
Fazlullah, Maulvi Muhammad.
Ferguson, Mr. R. H.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Graham, Mr. H.
Guha, Mr. P. N.
Hakim, Maulvi Abdul.
Haldar, Mr. S. K.
Haque, the Hon'ble Khan Bahadur M. Azizul.
Hogg, Mr. G. P.
Hooper, Mr. G. B.
Hoque, Kazi Emdadul.
Hosain, Nawab Musharruf, Khan Bahadur.
Hossain, Maulvi Muhammad.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Maulvi Abi Abdulla.
Khan, Khan Bahadur Maulvi Hashem Ali.
Khan, Maulvi Tamizuddin.
Martin, Mr. O. M.
Mitter, Mr. S. C.
Mitter, the Hon'ble Sir Brojendra Lal.
Momin, Khan Bahadur Muhammad Abdul.
Nazimuddin, the Hon'ble Khwaja Sir.
Porter, Mr. A. E.
Quasem, Maulvi Abul.
Raheem, Mr. A.
Rahman, Khan Bahadur A. F. M. Abdur.
Ray, Babu Amulyadhan.
Ray, Babu Nagendra Narayan.
Reid, the Hon'ble Mr. R. N.
Roxburgh, Mr. T. J. Y.
Ray, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Saakse, Mr. F. A.
Samad, Maulvi Abdus.
Sen, Rai Bahadur Akshoy Kumar.
Shah, Maulvi Abdul Numm.
Singha, Babu Kshetra Nath.
Stevens, Mr. H. S. E.
Tarafder, Maulvi Rajib Uddin.
Townend, Mr. H. P. V.
Woodhead, the Hon'ble Mr John.

The Ayes being 14 and the Noes 60, the motion was lost.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that for clause 13 (3) the following be substituted, namely:—

"(3) If any debtor fails to comply with a notice under sub-section (1) the Board shall pass an order declaring that the amount of any debt due by him to the creditor on the date of such order is as stated by the creditor in his application."

I do not think any speech is required. It is quite possible to have a constructive section like that to give effect to the whole Act.

The Hon'ble Khwaja Sir NAZIMUDDIN: I oppose the amendment on the ground of what I said in my speech when opposing Mr. Bose's amendment. It is no use repeating that argument; Mr. Townend and I emphasised the thing that it is absolutely against public policy to force debtors who are not prepared to go on with a compromise or to accept any terms of compromise. It is no use getting them before a Board. It is much better to leave them out straightaway. Until an answer is given to that, I am not prepared to look at any amendment with regard to that.

The amendment was then put and lost.

Rai Bahadur AKSHOY KUMAR SEN: Sir, I beg to move that in clause 13 (3), line 2, for the words "shall dismiss the application," the following be substituted, namely:—

"if so empowered under section 7, may pass an order in writing declaring that the amount of any debt due to the creditor on the date of such order shall, for the purposes of this Act, be deemed to be the amount stated in the statement of the debt submitted by the creditor."

My object is——

Maulvi SYED MAJID BAKSH: On a point of order, Sir. This motion is covered by amendment No. 270 in substance.

Mr. PRESIDENT: I am afraid you are labouring under a wrong impression, whereas amendment No. 270 suggested a provision that would apply to all the Boards; the provision that is now being suggested by the Rai Bahadur would apply only to such Boards as would be specially empowered to deal with such matters. There is that line of demarcation.

Maulvi SYED MAJID BAKSH: Still in substance both the amendments are the same.

Mr. PRESIDENT: No they are not.

Rai Bahadur AKSHOY KUMAR SEN: My submission is that there should not be any difference in meting out justice "এক ঘাটের পুণক ফল" The Board while giving redress to the debtors should not call upon the creditors to submit statements of debts due to them. The creditors have been empowered very generously under clause 9(3) to apply, and this power was given so that the debtors may be called upon to make a statement of their debts; they should also be given the power of having an award passed if the debtor is found wilfully absenting himself from such a Board. The Nawab Sahib said that it is a debtors Bill and not a creditors Bill. It cannot be argued like that because the relationship of the debtor and the creditor subsists and when a person is called a debtor there must be a creditor. A creditor should be considered to have much more interest than a debtor because he has advanced his good money to his neighbour in times of his need. Therefore, the Act should not be so framed as to debar him from taking the help of the provisions of this Act which you have so very kindly given to the debtor. I do not say that the agriculturists are not over head and ears in debt, but while Government has been so generous in their case, why should the creditors who are also willing to have their debts settled under the provisions of this Act be left out? It cannot be said that it is a debtors Act and not a creditors Act. The creditors' side cannot be ignored when the debtors' debt is going to be considered. That is all that I have to submit.

The Hon'ble Khwaja Sir NAZIMUDDIN: This amendment and the amendment which is likely to be moved by Babu Khetter Mohan Ray (I mean No. 280) have got one principle object behind them, namely, to compel the debtors to appear before the Board. In case they do not,

they will be penalised. The moment a penalty clause of that kind is put in, the debtor will appear before the Board. If a debtor is to be made to appear before a Board, then the Hon'ble Members who are proposing these amendments and those who are supporting them must give some reply to the point I have raised. What is the use of forcing them to appear before a Board if you cannot deal with them afterwards? It is no use. The scheme of the Act makes no provision for compelling the debtor to do anything further in any shape whatsoever. Until I find an adequate reply to that, no useful purpose will be served by moving these amendments. It is absolutely beyond question what the treatment of a debtor and a creditor should be. I have shown the practical difficulty in the way and the hon'ble members, I hope, will not press the point in view of what I have said.

Babu KHETTER MOHAN RAY: I beg to support the amendment moved by my friend Rai Bahadur Akshoy Kumar Sen. My reasons are these. Under clause 9(3) a creditor may come and apply to the Board for the settlement of his debts. In the Bill it is provided that it is optional for the debtor either to present himself before the Board or not. There is no penalty whatever provided in this Bill for non-appearance. A creditor will undergo certain expenses and trouble in coming to the Board and presenting his application, but if the debtor choses to frustrate the claim of the creditor, he may keep away from the Board and the result will be that no action will be taken by the Board on the application of the creditor. This Bill is not intended to benefit the debtors only, but so far as I remember the Hon'ble Member said that it would benefit not the debtors only but the creditors also. I understand from his introductory speech and also in the Statement of Objects and Reasons it is clearly laid down that in order to rehabilitate the rural credit Government have undertaken this legislation, not to benefit a certain section or class of people only. The agriculturists are groaning under a very heavy load of debt, and this has created a situation in the economic life of the people which will not only endanger the rural credit of the country, but also undermine the trade and commerce of others in this country. Therefore, this legislation has been undertaken by Government only to rehabilitate the rural credit and to benefit the country at large, and not to benefit the body of debtors only: that cannot be done by Government. They cannot benefit one community and deprive others of their just dues. If, Sir, Government try to benefit one class of people only and not the country at large, what will it come to? It will mean something like expropriation. Government ought not to have anything to do with expropriation. Their duty is only to see whether by this Bill they can improve the economic condition of the country, that is the explanation which the Hon'ble Member gave in respect of this Bill in his introductory speech and in the various speeches he has since made, in connection with it.

There is another point, Sir. In this connection I would like to say that it is the creditors only who are called upon to make sacrifices and not the country at large. But Government should have asked the whole country and not the creditors alone to make this sacrifice. We do not care if the creditors make this sacrifice for the benefit of the whole country, but we submit that they should not be subjected to any inability or any inconvenience—in short anything which would altogether undermine the rural credit of the country. For these reasons, Sir, we should see that in this Bill the creditors be not prejudiced in any way, consistently with the principle of giving relief to debtors.

Now, Sir, there is a provision in the Bill which allows the creditors to come in. Why should there not be any penalty for the debtor for failure to appear before the Board and say whether he is willing to compromise a debt or not? Thus an application on the part of a creditor is nothing but the invitation to a debtor to come to the Board and make a settlement. If he does not come, it shows that he is not willing. If he keeps away from the Board, it can be construed that he is able to pay his creditor fully, or that he is unable to pay. These are the two interpretations which can be made, but if he is able to pay let him come up before the Board and say that. If he is unable to pay, I do not think there should be any penalty imposed by the Board. My friend the Rai Bahadur proposes only a discretionary power to be vested in a certain class of Boards. His amendment says that such Boards under section 7 may pass an order in writing declaring that the amount of any debt due to the creditor shall be deemed to be the amount stated in the statement of the debt. This is a reasonable amendment, and I do not see why it should not be accepted. With these few words, Sir, I support the amendment of Rai Bahadur Akshoy Kumar Sen.

The amendment of Rai Bahadur Akshoy Kumar Sen was put and lost.

Maulvi ABUL QUASEM: Sir, I beg to move that in clause 13 (*3*), lines 2 and 3, the words "and may allow against the debtor such costs as the Board considers reasonable" be omitted.

Sir, this Bill is avowedly in the interest of the debtors though some benefit may incidentally accrue to the creditors if they so choose to interpret the position that will accrue to them if their debts are scaled down and are paid in instalments. The Bill does not contemplate that the debtors shall be compelled to come to any amicable settlement of their debts, that is to say that they must be compelled to come to the Board for a reduction of their own debt. If there are any debtors so obtuse-minded as not to be willing to receive the benefit which this Bill offers, they should not be compelled to receive

this benefit. The creditor will not be harmed in any way thereby, for the ordinary remedies under the law will be open to him. If he takes the chance of having his debt reduced, and that chance is not realized by the debtor not appearing and agreeing to settle the debt before the Board, I do not see why any costs should be provided against. When a creditor applies for settlement of a debt, he implies that he is willing to accept a reduced amount; that shows that he does not expect that the whole of his dues are likely to be realized. Then, what is the good of providing that the debtor should pay him costs, because the creditor has impliedly declared that the debtor is unable to pay him in full? I think, Sir, this is a provision which would be doing no good to the creditor. The Bill does not compel the creditor to come before the Board: he is only given a chance, and he may or may not avail himself of the chance. Sir, it is an agricultural debtors Bill. If the creditor does not come to the Board for settlement of his dues, his dues will still remain intact and untouched and he can get them realized through the medium of the Civil Court. I do not think that by providing for this cost the legislature should make it appear that the creditor is going to suffer a loss by reason of the debtor not coming before the Board and agreeing to have his debt reduced. It is avowedly in the interest of the debtor to have his debt reduced. If the debtor does not show his willingness to avail himself of the benefit, let him stew in his own juice as the saying goes. So, I think, Sir, that no cost should be allowed to the creditor.

Mr. S. M. BOSE: Sir, I cordially and whole-heartedly support this amendment, but for a different reason. The principle has already been decided against us. We do not want a two-penny ha'-penny remedy. What does it matter for a two or three-anna cost if law, justice and equity is to go? I really think that there should be an amendment making costs payable not by the debtor but by the creditor for having the impudence and the wickedness to apply under this Act. We have just heard from the Nawab Sahib about the shyness of the debtors and the wickedness of the creditors. If the creditor out of his wickedness and of malice afterthought makes an application against the shy debtor, why on earth —I ask in all seriousness—should that wicked creditor try to take advantage of this Act when it is not meant for him at all? Why should he be allowed any costs at all? The Hon'ble Member has just now said that the poor creditor should not be harassed. We are really very grateful to him for his great considerateness and forethought for the poor creditor. But, Sir, in spite of all that he has said, I submit that the scheme of the Bill is compulsion—absolute, pure and naked compulsion. The Hon'ble Member while introducing the Bill, as a previous speaker has already pointed out, was very smooth-spoken, saying that the Bill was for the good of both parties—debtor and creditor, the latter being also in a very bad way. Just as the debtor

cannot pay his dues, so the creditor cannot get anything at all. So, both of them are admittedly very hard up. We all believed that the Hon'ble Member was sincere—downright sincere—in this statement of his in his opening speech in introducing the Bill, that it was intended for the good of both parties, not only to give relief to the poor debtor but to the poor creditor also. Now, however, it seems to me that this Bill is not really what it purported to be, and if that be so, the sooner it is scrapped the better, because this Bill reeks pure and simple compulsion. I say, Sir, in all confidence that such a Bill is unknown anywhere else in the world in the shape which is proposed to be given to it. I say that in the Punjab and in the Central Provinces—the two places that the Hon'ble Member is so fond of quoting—there is nothing of this kind, and I challenge him, or any member on the Treasury Benches, or anybody else to produce in any part of the world—civilised or uncivilised—any similar legislation embodying compulson of this character. (MAULVI ABUL QUASEM: Show us similar conditions anywhere in the world excepting in Bengal.) Such conditions have existed in a great many countries in the world. In Ireland, for example, far worse conditions have existed than in Bengal, and yet with no such law. I again repeat my challenge to anybody here to show the existence of any similar legislation in the whole world. The Hon'ble Member referred with some approval about somebody asking for the whole hog of compulsion and all that. But has that been resorted to anywhere else? And why? For this, that reason and sanity still prevail—and commonsense still prevails—in all other parts of the world, except perhaps in Bengal—and except perhaps in Soviet Russia, as I am now reminded. Therefore, I say, in all seriousness, that if the rightful claim of the creditor to have his case proceeded with, if he is allowed to have any right of approaching the Board at all and if his claim is not to go on or to be dismissed because the debtor is absent, then we do not want that any costs at all should be given. That is a very small matter, and this amendment has apparently been put in by way of a salve to the conscience of the Hon'ble Member and others who feel that a grave injustice is being done

Babu SATISH CHANDRA RAY CHOWDHURY: Sir, I rise to support Mr. S. M. Bose in all what he has said. As regards the cost to be awarded against the creditor, there will be no costs incurred. But I would add that damages against the creditor be awarded to the debtor for the creditor going to the Board with a wicked motive. That, Sir, would be complete logic and a complete picture of the way legislation is being enacted here.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I am sorry that members of the Select Committee get up in this House and make statements which they cannot substantiate. Some of them have challenged

my sincerity and honesty as regards the statement that I have made. I challenge anybody to show that there has been any deviation by one iota from any statement that I made in this House. Sir, this Bill will benefit both the debtors and creditors. It is most surprising, unfortunate and deplorable that those members of this House who were on the Select Committee and had gone right through the proceedings, still think that there was any provision in this Bill by which we could compel debtors to come to an agreement. Member after member who has spoken during the last two hours have not been able to answer that question. They know that there was never such a suggestion made in the Select Committee and yet they have criticised it, knowing full well that it would serve no useful purpose. Instead of meeting that point—and they know that they cannot do so—on purely sentimental grounds they have used extravagant language as regards the discrimination between a debtor and a creditor. I ask any one of them to show to me how a creditor is going to benefit if any one of these amendments be accepted. Not one member has been able to show one tangible way in which the creditor will benefit by compelling "an unwilling debtor"—mark my words "an unwilling debtor"—to appear before a Board. Can they show any provision by which a creditor will benefit by doing so? Nothing of the kind was ever suggested in the Select Committee. As I was saying, Sir, if they can show that there is a single provision in this Bill by which a creditor will benefit by compelling an unwilling debtor to appear before a Board, then whatever they say is correct; otherwise I maintain that every one who has spoken from the other side has wasted the time of the House.

Mr. PRESIDENT: I think I should tell the Hon'ble Member that the House is certainly entitled to revise any decision of the Select Committee; the House possesses that power. So one need not be surprised if members who were on the Select Committee change their mind in the light of arguments advanced on the floor of the House and revise their opinion.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, what I meant was that whatever the House might do in future, in the Bill as it emerged from the Select Committee, there was no such provision whatsoever. That is the point I wanted to make clear.

Then, Sir, as regards the question of costs, again I may say that it was after discussion and by a majority decision it was decided so, and I feel that I ought not to go back on that decision. May I state that we have stuck to all amendments that were passed or carried in the Select Committee and have only put in amendments where we have been advised that the provision is defective.

Mr. PRESIDENT: That is a different matter. It must be admitted that the decision of the Select Committee is not binding on this House. The House may either supplement or modify it—the House has the power to brush it aside altogether.

Mr. S. M. BOSE: Sir, may I be allowed to say a few words by way of personal explanation?

Mr. PRESIDENT: Yes, but try to be as brief as possible.

Mr. S. M. BOSE: Sir, the Hon'ble Member in charge has just now attacked some members of the Select Committee meaning thereby those members who have spoken on this matter, viz., myself and Babu Khetter Mohan Ray.

Mr. PRESIDENT: You better speak for yourself only.

Mr. S. M. BOSE: I think the attack is unfair for the simple reason that certain points escaped us in the Select Committee——

Mr. PRESIDENT: I am afraid that that is not the way to offer a personal explanation. If the Hon'ble Member has misrepresented any statement that you might have made you may correct him by an explanation, but you cannot make a second speech.

Mr. S. M. BOSE: Sir, the Hon'ble Member has just stated that we have attacked him unfairly. I do not think that he is right in saying so. I may say that what he said before entirely misled us and we now find that the object is something different. That should in no way be considered to be an attack on him.

Mr. PRESIDENT: Order, order. That is not a personal explanation.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Sir, in the dust that has been raised the real issue has been lost sight of. The original provision in the Bill as it emerged from the Select Committee was to the effect that when a debtor refuses to appear or fails to obey the summons, the application was to be necessarily dismissed, but now a provision has been added by the Select Committee that the debtor will also be liable to pay costs. Maulvi Abul Quasem objects to this addition. The Hon'ble Member in charge of the Bill has emphasised the point, and very rightly too, that the Bill nowhere provides any sort of compulsion on the debtor. If the debtor does not choose to be benefited by the provisions of this Bill, it is for nobody to force him to be benefited. If a creditor makes an application, he makes it perhaps only

when he has come to the end of his resources and finds that it is impossible for him to realise his debts as there are so many creditors that the assets of the debtor will not be sufficient to go round all of them. Therefore, he applies to the Board for some relief. It is for the debtor either to choose and come before the Board and accept any agreement that may be arrived at or he may sit tight at home and take no action and there is nothing in the Bill, as the Hon'ble Member has said, to compel him to do so. Therefore, all that the Board can do is to dismiss the application. Why should the debtor be, furthermore, asked to pay the costs? That is the simple question. Of course, it may be said that the debtor may resort to obstructive tactics; he may appear one day or he may make an application and then after all the creditors have appeared, he may remain absent and so forth. In any case where the debtor is an applicant and fails to appear, the application is dismissed and there ends the matter. Where the creditor is the applicant, the debtor is not expected to be benefited and he may not be liable for the costs.

The amendment was then put and lost.

The Hon'ble Khwaja Sir NAZIMUDDIN: I beg to move that in clause 13 (*3*), last line, after the words "considers reasonable," the words "and such costs shall be recoverable as a public demand on application made within the prescribed period by a creditor to whom the same is due" be inserted.

Sir, this is a consequential amendment.

The amendment was then put and agreed to.

Babu KHETTER MOHAN RAY: I beg to move that to clause 13 (*3*), last line, after the words "considers reasonable" the following be added, namely:—

"and the debtor failing to comply with such notice shall be precluded from making any application under section 9 in respect of any debt."

Sir, I shall not repeat the arguments I have already advanced in connection with other amendments. My reason is that it will lead to harassment of the creditor if no such provision is made. Now, when a creditor has made an application and the debtor has been invited to come before the Board, the creditor finding no response goes to the Civil Court and gets a decree and is about to sell the property; the debtor then will come to the Board and say that he is ready to make an amicable settlement. When the creditor applies and the debtor does not appear, the latter should not be allowed to come again; otherwise, he will play hide-and-seek always; and at the moment only when his property is being attached, he will apply to the Board for an amicable

settlement. Will it not, Sir, lead to the harassment of the creditor? I appeal to the Hon'ble Member to say whether this will not be so. There are hundreds of ways in which a debtor can harass the creditor. There are provisions in this Bill, *e.g.*, if the debtor fails to come within a certain time and if he can satisfy the Board as to why he was prevented from coming, then the Board can consider his case. With these words I commend my motion to the acceptance of the House.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, my reply to Babu Khetter Mohan Ray is a very simple one. It is that all that the debtor will do will be to put in his appearance before the Board; he will not allow this penalty to be imposed by making his appearance before the Board. He will make such an unreasonable offer as will not be accepted by the *mahajan*. That will not prevent him from coming to the Board as long as there is a case still before the Board for the debts already incurred before the first application, but he can make a second application as it is not a compulsory Board but one with ordinary powers. So this provision does not help him in any way. For these reasons I would oppose the amendment.

The amendment was then put and lost.

Mr. PRESIDENT: Would you be inconvenienced if you move your amendments Nos. 281, 283, 287 and 289 at this stage and make one speech? That will save quite a lot of time.

Mr. S. M. BOSE: It will not inconvenience me. Sir, I beg to move (No. 281) that in the first proviso to clause 13 (*3*), in lines 1 and 2, the words, figure and brackets "or sub-section (*3*)" be omitted.

As regards this motion, the proviso says "that an order made under sub-section (*2*) or sub-section (*3*) may be varied or reversed by the Board on an application for review or by the Appellate Officer on appeal if it is proved to the satisfaction of the Board or of the Appellate Officer that the creditor or debtor, as the case may be, had no knowledge of the notice under sub-section (*1*) or that he has complied with it or that he had sufficient reason for non-compliance." Sir, under sub-clause (*3*), as you will find, if the creditor applies and debtor fails to appear and comply with an order under sub-clause (*1*), then the appeal against him stands dismissed. So under sub-clause (*3*), there is no occasion for the debtor to apply at all because the order has been made in his favour and it is only a man of high character like Mahatma Gandhi who might say: "I am sorry the order was wrongly passed in my favour; I want to appear and I want the dismissal order set aside as I could not appear." This is impossible to expect of human nature, that a debtor who has got an order passed in his favour by his own default, is to go out of his way to have this order set aside. When the order has been passed against him under sub-clause (*3*) and all the

proceedings are going on, as in the Act, it is impossible to expect that the debtor should of his own motion have an order made in his favour to say "I want the case against me to be revived because I have not knowledge of the notice, etc." I think it is unreasonable to expect that, so there is no occasion to include sub-clause (*3*) because the debtor will not apply to have the case against him restored. That is never done.

Sir, I beg to move (No. 283) that in clause 13 (*3*), in the first proviso, in line 5, after the words "or debtor," the following be inserted, namely:—

"or any person referred to in clause (*a2*) of sub-section (*1*) of section 11."

As regards this motion, I want it to be "clause (*bb*)" and not (*a2*). We already know that under clause (*bb*) the applicant must state any debt for which the debtor is liable as a joint debtor with third person together with names and addresses of all such persons. Here I say that if the notice is served on all other persons, joint debtors included, and I think they might have the same advantage extended to the creditor and the debtor, namely, that they should be allowed to show that they have had no knowledge of the notice under sub-clause (*1*) or that they had obeyed that notice.

Sir, I beg to move (No. 287) that in clause 13 (*3*), in the second proviso, in line 2, the words, figure and brackets "or sub-section (3)" be omitted.

As regards this motion, the same argument as in motion No. 281 applies.

Sir, I beg to move (No. 289), that in clause 13 (*3*), in the second proviso, in lines 4 and 5, after the words "or debtor," the following be inserted, namely:—

"or any person referred to in clause (*a2*) of sub-section (*1*) of section 11."

As regards this motion, as in motion No. 283, I want "(*bb*)" instead of "(*a2*)" to be inserted. All persons ought to have also the same advantage as this clause is extended to debtors and creditors.

Mr. H. P. V. TOWNEND: Government are prepared to accept Nos. 283 and 289 in their present form, as amended with your permission, *i.e.*, with "(*bb*)" substituted for "(*a2*)" in them because, as has been pointed out by Mr. Bose, a person who is jointly liable for a debt but who is not a "debtor" within the meaning of this Act, might be debarred from applying for revision. But we cannot accept amendments Nos. 281 and 287. It has been suggested that there is no reason why a debtor should apply for revision. But I would point out that under sub-clause (*3*), the Board may pass an order levying costs against

the debtor, and the effect of this amendment would be that the debtor could not ask for the orders passed regarding costs to be set aside. His only remedy would be to go to the Appellate Officer which might put him to considerable expense. There is also the possibility that he was perfectly willing to obey the notice and file his statement, but was prevented by something beyond his control: if the Board thought it reasonable, not otherwise, they would set aside the order in such a case. That seems quite reasonable. I oppose amendments Nos. 281 and 287.

The following amendments of Mr. S. M. Bose were, by leave of the House, withdrawn:—

That in the first proviso to clause 13 (*j*), in lines 1 and 2, the words, figure and brackets "or sub-section (3)" be omitted

That in clause 13 (*j*), in the second proviso, in line 2, the words, figure and brackets "or sub-section (3)" be omitted

The following amendments of Mr. S. M. Bose, as modified, were put and agreed to:—

That in clause 13 (*j*), in the first proviso, in line 5, after the words "or debtor," the following be inserted, namely:—

"or any person referred to in clause (*bb*) of sub-section (*1*) of section 11."

That in clause 13 (*j*), in the second proviso, in lines 4 and 5, after the words "or debtor," the following be inserted, namely:—

"or any person referred to in clause (*bb*) of sub-section (*1*) of section 11."

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that after clause 13 (*j*), the following proviso be added, namely:—

"Provided further that if the name of any creditor is not mentioned by the debtor in his application under sub-section (*1*) of section 9 or if no notice is served on him any determination of debt due to such creditor or any award made by the Board and all proceedings taken thereunder will be a nullity and such creditor shall be entitled to seek his remedy in the Civil Court."

I want to suggest that in case the debtor does not appear, any order of the Board will be a nullity and the creditor shall seek his remedy in the Civil Court. If the award stands, it may hamper him in finding his remedy in the Civil Court and the creditor should be left entirely free. It is not known what legal effect the award will have unless it is specifically provided for.

The Hon'ble Khwaja Sir NAZIMUDDIN: This would penalise any debtor who does not happen to be aware of the extent of his debt.

view of the ignorance of some of the debtors, it is quite possible that in the matter of a particular claim, the debtor may be under the genuine impression that he has paid off his debt. In fact, he may have paid all his debt but left his creditor with the proof of his debt. There are also many cases where all these people sign blank papers, and he may have paid some portion of his debt, but in the blank paper more has been put down. In view of this fact, I cannot accept this motion.

The amendment was put and lost.

The question that clause 13, as amended, stand part of the Bill was put and agreed to.

Clauses 14 and 15.

The question that clauses 14 and 15 do stand part of the Bill was put and agreed to.

Clause 16.

The question that clause 16 stand part of the Bill was put and agreed to.

Clause 17.

Maulvi ABDUL HAKIM: I beg to move that in clause 17 (*1*) (*a*), line 2, the words "or practicable" be omitted.

I bring this amendment primarily for two reasons. My first reason is that these words are redundant. My second reason is that if such a sentence, namely, "if the Board does not consider it practicable," is retained in the clause, the Board may take advantage of this sentence as an excuse for dismissing applications. All Boards may not be equal in doing duties and some of them might be lazy and may not do full justice to the application and on a slight pretext lazy Boards may dismiss the application to avoid heavy work and clear their files. Sir, what do we find in the mufassal? There are Deputy Magistrates in the mufassal who are reluctant to do a due share of work in the trial of criminal cases which are allotted to them for disposal. Sometimes, in order to clear up their files, they dismiss complaints just at 11 o'clock when the parties may not be present for some unavoidable cause.

Mr. PRESIDENT: I am afraid, I have to adjourn the House now. Before I do so, I would like to state that His Excellency has decided that the Council should meet on Saturday next.

Adjournment.

The Council was adjourned till 2 p.m. on Friday, the 6th December, 1935, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Friday, the 6th December, 1935, at 2 p.m.

Present:

Mr. Deputy President (Mr. RAZAUR RAHMAN KHAN) in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers and 90 nominated and elected members.

STARRED QUESTIONS

(to which oral answers were given)

Detenu Debendra Nath Bose.

*13. **Maulvi MUHAMMAD FAZLULLAH:** (*a*) Will the Hon'ble Member in charge of the Political (Jails) Department be pleased to state whether it is a fact that detenu Debendra Nath Bose, now confined in the Hijli Detention Camp, was first arrested and served with orders of internment in jail at the time when he was coming out after serving his term of imprisonment for nine months for civil disobedience by leading a procession?

(*b*) If the answer to (*a*) is in the affirmative, will the Hon'ble Member be pleased to state for what reasons it was held in that case that he was committing or was about to commit any offence included in the First Schedule to the Bengal Act VI of 1930?

(*c*) Is it a fact that in May, 1934, he was removed from the Hijli Detention Camp and kept confined in the Midnapore Central Jail as an undertrial prisoner on the ground that he was about to commit violence on the Detention Camp officers, while feigning insanity?

(*d*) Is it not a fact that it was subsequently found that he was mad?

(*e*) Was his madness declared to be due to long confinement under a monotonous environment in the jail for three years?

(*f*) Is it a fact that after detention for one month at the Bhowanipore Mental Observation Ward, he was declared a confirmed lunatic and was sent to the Ranchi Mental Hospital where after treatment for nine months for insanity he was sent to the Presidency Jail in Calcutta?

(*g*) Is it a fact that during his detention in jail he has lost all his property and even his ancestral house has been sold out?

(*h*) Is it a fact that he has again now been sent to the same Hijli Camp and placed under the same circumstances as existed prior to his insanity?

(*i*) Is the Hon'ble Member aware that again he is very gradually relapsing into his former condition?

(*j*) Is it a fact that several petitions were submitted for his release under any terms of security or in any case for his removal or his transfer from the Hijli Camp? If so, with what effect?

(*k*) Are the Government paying sufficient attention against losing his sanity again?

MEMBER in charge of POLITICAL (JAILS) DEPARTMENT (the Hon'ble Mr. R. N. Reid): (*a*) Yes.

(*b*) Government are not prepared to disclose the grounds on which they considered it necessary to take action.

(*c*) He was removed to the jail as an undertrial prisoner with a view to prosecution for assault and intimidation.

(*d*) He was certified by the Civil Surgeon, Midnapore, to be a lunatic.

(*e*) No.

(*f*) He was handed over to certain relatives at their request. They, however, made him over to the Police; and after a period in the Mental Observation Ward he was sent to the Mental Hospital at Ranchi where he remained for about six months. On recovery he was committed to the Presidency Jail, and later to Hijli Detention Camp.

(*g*) Government have no information.

(*h*) He is now in the Detention Camp at Hijli.

(*i*) Government have had no information to this effect.

(*j*) Two petitions were received in March 1935; Government were unable to grant the requests then made. In reply to a recent petition his sister was advised that if the detenu desired to undergo industrial or an agricultural training he should submit an application through the Commandant.

(*k*) Yes.

Books allowed to prisoners in jail.

***14. Maulvi MUHAMMAD FAZLULLAH:** (*a*) Will the Hon'ble Member in charge of the Political (Jails) Department be pleased to state as to what rules are observed by the jail authorities in the matter of allowing books to the prisoners?

(*b*) Is it a fact that books by Dr. Rabindra Nath Tagore and Mr. George Bernard Shaw are not allowed inside the jails?

(*c*) If the answer to (*b*) is in the negative, what are the reasons?

The Hon'ble Mr. R. N. REID: (*a*) The attention of the hon'ble member is invited to rule 662 and rule 24, Chapter XXXIV of the Jail Code, a copy of which is in the Library.

(*b*) Books by these authors are not prohibited.

(*c*) Does not arise.

GOVERNMENT BUSINESS

LEGISLATIVE BUSINESS

GOVERNMENT BILL.

The Bengal Agricultural Debtors Bill, 1935.

(At this stage, discussion on the Bengal Agricultural Debtors Bill, 1935, was resumed.)

Maulvi ABDUL HAKIM: Sir, yesterday I said that there are Magistrates, I mean Deputy Magistrates and Sub-Deputy Magistrates, in the mufassal, who are very much reluctant to do their work diligently in the trial of cases which are transferred to their files. Sometimes they cut short their work and clear their files in a deplorable manner—and then what do they do, Sir? They simply idle away their time. I am afraid there might be some Boards which would be as lazy or as reluctant to discharge their functions as the Magistrates I have mentioned. And if these words, namely, "if the Board does not consider it practicable," are retained in the clause, the lazy Boards may use this conditional sentence as a pretext for avoiding their due share of work by dismissing the application. There are more ways than one in which a Debt Conciliation Board may proceed with the application. If the Board cannot proceed with the application under any of the sections, such as sections 19, 19A, 21, etc., the Board is competent enough to proceed with the application at least under section 20; and this section, too, is calculated to give much relief to the debtor, and if all other remedies fail, every Board can give relief under section 20 to all debtors so that the unfortunate debtors may try their fate once more in the world for repayment of their debts under this Act after a lapse of some years, when economic distress will be less felt or will be over and better days will dawn upon us. I have no objection to retaining the words "if the Board does not consider it desirable," because a settlement may be considered undesirable on account of the fault of the

debtor, and if the debtor proves a defaulter or a bad applicant, the Board may not have any pity upon him and may dismiss his application at any stage of its proceedings. My submission, however, is that an application under section 9 should not be dismissed by the Board at any stage of its proceedings even though the settlement of the debt proved impracticable under section 19 of the Act. I should again urge that the Board should proceed with the application in any other ways left open to it by this Act, even when the settlement of a debt proves to be impracticable. Every debtor should be given full opportunity for getting relief under this Act, and no debtor should be deprived of it on account of the laziness or reluctance on the part of the Debt Conciliation Board.

Mr. SARAT KUMAR ROY: Sir, I fail to understand why an application for settlement or debts should not be dismissed by the Board, even if it finds such settlement to be impracticable. We cannot compel a Board to perform an Act which is, in fact, impracticable. So, Sir, I think it is quite logical that the word "practicable" should be there.

I, therefore, oppose this motion.

Mr. H. P. V. TOWNEND: Sir, the mover suggests that the word "desirable" makes the addition of the words "or practicable" meaningless. This suggestion was examined by officers of Government, and it was decided that if the wording was amended in the manner desired by the hon'ble member, the result might be unfortunate. There are many people who consider that a settlement is "desirable" in every case. I have heard the opinion expressed that in every single case, no matter what the position was, no matter what the debtor might have done in the past or what he might be prepared to do in the future, debts ought to be scaled down, because all creditors, at least all *mahajans*, were in the wrong from the start. Therefore, there might be difficulties even if we accept the amendment. The other point raised by the mover was that the Boards might be too lazy to do their work, and might use the argument that a settlement was not practicable as an excuse to dismiss cases. It seems to me that if members of the public desire to serve on the Boards at all, they will be prepared to do the work. The member referred also to Government officers who might be Chairmen of certain Boards: they could be dealt with appropriately by their superior officers: but, so far as private individuals are concerned who would come forward voluntarily to serve as members of the Boards,—if they are not prepared to do the work, why should they come forward at all? Also, there is nothing to prevent them from declaring that a settlement is not "desirable" if they wish to avoid dealing with any application; and so this suggested remedy would not have the effect which is anticipated by the mover. I do not think it is necessary to add anything more except that it is impossible to accept the amendment.

The amendment was put and lost.

Mr. S. M. BOSE: Sir, before I move the motion that stands in my name, may I have your permission to insert clause (*bb*) in place of clause (*a2*), in line 3, of my amendment?

Mr. PRESIDENT: No objection.

Mr. S. M. BOSE: Sir, I beg to move that in clause 17 (*1*) (*c*), in line 2, after the words "any creditor," the words "or any person referred to in clause (*bb*) of sub-section (*1*) of section 11" be added.

Mr. H. P. V. TOWNEND: To save discussion, I may say at once that Government are prepared to accept it.

The amendment was put and agreed to.

Maulvi SYED MAJID BAKSH: Sir, I beg to move that in clause 17 (*2*) (*b*), in line 1, after the words "there has been transfer," the words "after the establishment of a Board" be inserted.

Sir, this is one of the many additions that were made in the Select Committee at the instance of interested parties. (SEVERAL VOICES: Interested parties?) I say, advisedly, definitely, and I reiterate it in the presence of any person who may object to it. The original clause was, "the Board shall dismiss an application under section 9, if it includes a claim which, in the opinion of the Board, is collusive and intended to defraud any creditor." That was very good, Sir. But instead of that, we have now a voluminous section, and a sub-section which is as follows:—

(2) An application under section 9 shall be dismissed by the Board, if in its opinion—

(*a*) such application includes a claim which is intended to defraud any creditor; or

(*b*) there has been transfer of any property by the debtor within two years previous to the date of such application with a view to defraud any creditor.

The position is that if an unfortunate debtor, finding that a large number of creditors was harassing him, and that he had very little to pay off their dues, in order to protect himself from such harassment, made a transfer of his property without knowing that an Act like the present one was soon going to be given effect to, and if he did so within two years from now, his application is sure to be dismissed. This measure was brought to the notice of the public in August last, it passed through the Select Committee stage during October, and it is going to be passed by this Council by the end of this month. It has

not been before the public for even six months, and judging the way in which it is being expedited, it is expected that the Boards will be established by another three months. If then it is found that a person made a transfer of property two years before in order to protect himself from the harassment of his creditors—although the transfer can be dealt with in a Civil Court under the Transfer of Property Act—his application before a Board will be dismissed. Suppose, there are ten creditors from whom he owed money, and in order to save himself from one creditor, he makes a transfer, why in the case should he not have relief in respect of his debts taken from the other nine creditors? This is inequitous. It would, therefore, be more reasonable if the words "after the establishment of a Board" is inserted. In that case, the debtor will see that there is an Act by which he can compound his debts, and if after that, he makes a transfer of his property in order to defraud his creditors, he must be penalised. But I cannot understand why he should be pealised for a transfer he made two years ago, especially as he might not have known at that time that a measure like this was going to be enacted, and that he would have an opportunity to compound his debts. I, therefore, submit that in the interest of the poor debtor, who might otherwise have got relief from the Boards, the Hon'ble Member would do well to accept my amendment.

Mr. S. M. BOSE: Sir, I beg to oppose this amendment, and in doing so, may I call the learned mover's attention to section 53 of the Provincial Insolvency Act, which says, that when a transfer of property which is not made in consideration of marriage or in good faith, shall, if the transfer has been adjudicated an insolvent, be made two years . . . . Sir, here we go farther, and that is this—"with a view to defraud any creditor." That makes it clear that the transfer was made with the intent of defeating the purposes of the measure. This principle has been accepted in every system of law, and I see no reason why such a transfer, deliberately made with a fraudulent intention, should not be penalised.

Maulvi SYED MAJID BAKSH: May I know the year when the Insolvency Act was passed?

M. S. M. BOSE: 1920.

Mr. SARAT KUMAR ROY: Sir, fraudulent transfers of property which are meant for depriving creditors of their just dues are unquestionably dishonest acts on the part of such debtors; and it makes no difference as to when such acts are performed. Whether such dishonesty is practised before or after the passing of this Act, the debtor is equally liable. Sir, it is a settled principle of equity that a dishonest person ought not to be given any equitable relief, as equity demands

that he who seeks it, must come with clean hands. So I think the provision in the Bill is a wholesome one, intended to defeat such dishonest practices. I therefore oppose this motion.

Mr. H. P. V. TOWNEND: Government must oppose this amendment for reasons which I think the mover already knows. As Mr. S. M. Bose has pointed out, he has in his arguments, lost sight of the last few words of the clause, "with a view to defraud any creditor." If he takes account of these, his argument falls to the ground. People who have transferred lands without any knowledge of this Act would not be affected, unless they were trying to defraud their creditors.

Maulvi SYED MAJID BAKSH: Even in the case of one creditor?

Mr. H. P. V. TOWNEND: Yes. The point is this. We cannot deal with people under this Act who do not come forward with clean hands. If a man is prepared to defraud one creditor, he is prepared to defraud others. The whole scheme of the Act depends on honest dealings by the debtor, once his debts have been compounded. Unless he is prepared to pay his debts honestly, and as promptly as he can, the whole thing falls to the ground. It is no good saying that this man is one-tenth dishonest, that he has swindled only one creditor out of ten, and that, therefore, he should be allowed to get relief in respect of his debts from the other nine creditors. The thing is that he may swindle the other nine as soon as he gets an opportunity. It is not desirable that such a man's application should be considered by the Board. It is not at all desirable to deal with people who are prepared to swindle. Sir, this is a nonsensical argument, and we cannot accept it for a minute. Then, it has been argued that the provision would be very hard on people who did not know that the Bill was going to be passed, and that, had they known it, they would not have been dishonest. I say, Sir, this measure is not a new thing. Rather, we have been accused of delaying too long before actually introducing it. People have known for months that there would be debt settlement. His Excellency made a speech in November, 1933, announcing the intention of Government to deal with debt; the report of the Board of Economic Enquiry was published, I think, some nine months ago, and the newspapers have been full of rumours. There has been plenty of time for dishonest people to start attempts to swindle their creditors. The possibility of this was one of the chief objections brought to the notice of Government; it was obviously a real one and there was definite need for safeguards against it. This provision was, therefore, inserted by the Select Committee. It seems to me that the House will agree that it is very fair to both sides.

The amendment was put and lost.

(At this stage, Mr. President took the Chair which was vacated by the Deputy President.)

The question that clause 17, as amended, stand part of the Bill was then put and agreed to.

New clause 17A.

Mr. S. M. BOSE: Sir, I beg to move that after clause 17, the following new clause be inserted, namely:—

"17A. Any alienation by the debtor of his property after the date of any application under section 11 and before the date of the award shall be void."

Sir, the object of my amendment is this. Suppose a debtor applies on 1st January, 1936, and suppose the Board takes some time to dispose of it. It may take three or four or five months, and, say, in May, an order is passed making the award. In the interval, suppose the debtor alienates a part of the property which he had included in his application under section 11 of this Bill. The object of my amendment is to see that such alienation, when an application is pending before the Board, should not be valid but should be regarded as void.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, obviously this amendment cannot be accepted. We have already provided that any alienation made not only after the date of application but two years before, with a view to defraud the creditor, will have the effect of dismissing the application, if made by the debtor. There will be, in that case, no composition. So, here if we prevent a debtor from transferring his property, it will create not only hardship but a lot of difficulties. It may happen that he will have to sell off a part of his property to pay the dues of a particular creditor in the meantime. As long as the object of alienation is not to defraud any of his creditors, it is perfectly justified. If we make a stringent provision like this, it will prevent debtors from making *bona fide* or genuine transfers which may be in the interest of all, and even in the interest of his creditors. It may also happen that a secured creditor is prepared to accept a reduced amount in a lump sum which will again give a better chance to the unsecured creditors, and for that purpose a transfer is very desirable. Once you start this machinery going, a large number of settlements will take place outside the Boards, and persons concerned will make up their cases first and then come to the Boards. In such cases, it will be necessary for a debtor to pay A, a secured creditor, first, and then B and C, who are unsecured creditors, will come to terms with him. Therefore, I suggest that it will not be in the interest of either the debtor or the creditor to accept this amendment.

Babu JATINDRA NATH BASU: Sir, the principle that underlies all measures of debt settlement is that whilst relief should be given to debtors, at the same time we must provide that there should be no

fraudulent transfer of property by the debtor with a view to defraud his creditors. As has been pointed out by Mr. S. M. Bose, under the law of insolvency, as it prevails in the Presidency towns as well as elsewhere, any transfer of property by a debtor even within two years before the presentation of his petition may be challenged, and any transfer made three months before the presentation of the petition is void and inoperative. Besides, if the transfer is a voluntary one, for instance, a transfer in the name of a daughter or son or wife, such transfer is always liable to be set void. The law of insolvency contains specific provisions that a debtor should not take advantage of the procedure laid down for his relief in order to defraud his creditors by dishonest means. The provision that is sought to be introduced by this amendment merely states that any alienation by the debtor of his property after application, and before the date of the award, should be void because when the award is made, all questions of adjustment have to be finally dealt with by the Board, and the Board lays down what is to be done with the property. In the meantime, the Board may find that the property that existed is no longer in existence, but has been done away with. Sir, that is a contingency that I am quite sure Government desire to provide against, because Government ought to see that when a man seeks relief under a special legislation he does so with clean hands. That has been the principle of English Law and of all kinds of Indian Law—Hindu or Muhammadan—that a man who comes before a tribunal for relief will be given relief if his hands are clean. But if he has made a fraudulent transfer of his property, he should not be given relief, and there should be specific provisions which should regulate his right of transfer in such a way that there can be no fraud. The provisions that are in this Bill do not go to the length necessary to stop fraudulent transfers. Both clauses 32 and 22 are permissive sections where transfer may or may not be declared inoperative, but as in the case of the Law of Insolvency there should be a provision here that if a transfer is effected at a time when a person finds that he is over head and ears in debt and he commits a fraud, that is to say, he prefers one creditor to another or he purports to sell his property to a man who is alleged to be his creditor, sacrificing the claims of other creditors, or he makes a *debut* such as a gift in favour of his wife or child, then these must be prevented. If you are going to promulgate a piece of legislation for the relief of debt, you must at the same time, simultaneously with the promulgation of such legislation, prevent the loopholes that are always liable to be seized upon by debtors to avoid payment of debt and to enjoy his property, it may be not in his own name, but in the name of some fraudulent transferee. On this ground, Sir, I support the amendment that has been moved.

Babu KHETTER MOHAN RAY: Mr. President, Sir, I beg to support the amendment moved by my friend Mr. S. M. Bose. In clause

17(2)(*b*) there is a provision that a transfer made within two years previous to the date of such applications with a view to defraud any creditor may be annulled, but no such provision has been made here to get a fraudulent transfer annulled or to declare as fraudulent a transfer made subsequently with a view to defraud a creditor. The Hon'ble Member has referred to certain transfers which are evidently for the benefit of debtors and creditors alike. If such transfers are made at all, they could be made with the permission of the Board, and there will then be no objection. This amendment seeks to provide that any alienation by the debtor of his property after the date of any application under section 11 and before the date of the award shall be void. This, Sir, is the general law in insolvency proceedings and also in all other proceedings, that is, that a man who comes to the Board must not alienate any property, which will have the effect of depriving his creditors of their just dues. In these circumstances, Sir, I think that this amendment should be accepted. If any alienation is done with the permission of the Board, then it will not be considered a fraudulent transaction. With this reservation, at least, Government may accept the amendment as moved by Mr. S. M. Bose.

Khan Bahadur MUHAMMAD ABDUL MOMIN: SIR, I am afraid that Mr. S. M. Bose and the supporters of his amendment are making an unnecessary fuss over this matter. If a debtor wants to defraud an unsecured creditor, it is not likely that he would first make an application for the settlement of his debt and then go to transfer his property fraudulently to his wife or child. If fraud was intended, he would have done so before he applied to the Board for such settlement, and in that case my friend Mr. S. M. Bose should be unable to prevent him from transferring the property. There is no provision of law anywhere unless it comes within the usual law of fraud which can prevent a person from transferring his property to anybody, even if the practical consequence of such transfer may be the defrauding of an unsecured debt. Why should he transfer his property if he has already made an application to the Board? The only reason for the transfer after the application is made is, as has been explained by the Hon'ble Member, the composition of his debt, for selling his property at an advantage in order to get the best price for it, and with that money to pay off his unsecured debts or to pay off in the manner settled by the Board. It is not likely to be to his or to anybody's advantage for him to transfer his property after an application has been made. Then, again, Sir, when a creditor advances money unsecured by any security, he takes the risk of the debtor having no property from which he can realise his dues. Why should then there be this provision in the Act that a transfer effected after an application is made will be void, when from the very beginning there was no

security for the creditor whom Mr. S. M. Bose now wants to save? I think, therefore, there is absolutely no reason for the amendment which has been moved, and I oppose it.

Mr. H. P. V. TOWNEND: Sir, I am afraid that even if the amendment is altered, as suggested by one speaker, it could not be accepted by Government. And, in any case, there is no amendment before this House for modification of the amendment. Even if there were a change in the wording of the amendment, what does it mean? The amendment says, "any alienation by the debtor of his property... ." Of "his property;" does that mean "the whole of his property" or a part of his property? If it means the whole, it could be easily evaded. Clearly it is intended to mean "any part of his property." The debtor would not be allowed to sell any of his property, movable or immovable. Then how is the unfortunate man going to live? We have been told by Mr. Basu that the debtor must "come up with clean hands;" I gather that Mr. Basu wants him to go with an empty stomach. He could not make a valid sale of the produce of his land until there was an award. His position would be impossible. The amendment suggests that after the application and until the award any alienation of the property would be "void." Now, Sir, what does this mean? The wording is very significant. In the Insolvency Act it will be seen that the transfer of property with the intention of avoiding the Act is not "void" but "voidable" and "voidable as against the receiver" only. But here in this amendment the whole thing is void, no matter against whom. In fact, the debtor might sell his property and then having safely obtained the purchase money refuse to hand over the property. He could say, "the alienation is void; the property is still mine" and leave the purchaser to recover the money if he could. This is to encourage a debtor to come with dirty hands. Is that what the mover wants?

The wording of the amendment is absolutely defective, and it is impossible to rectify it on the floor of the House. The whole conception behind the amendment is totally wrong also, and no good reason has been given why there should be such a provision in the Bill. It seems that the remedy is far too drastic for the disease that is suspected.

But there is another objection to it. There is no question of the alienation being voidable as against the creditor only; there need not be a decision by a Court, in fact. It is void altogether. But, Sir, who is to decide that it is void? The Board? If the Board is going to decide this question, is there not every opportunity for corruption creeping into the Board, or, at least, for corruption being alleged against the Board, and will not in that case the prestige of the Board suffer and in the end may it not disappear altogether? If so, the amendment will make the Bill totally unworkable, and I therefore oppose it.

Mr. S. M. Bose's amendment was put and lost.

Mr. S. M. BOSE: Sir, I beg to move that in clause 18 (*2*), in the last line, after the words "due thereon," the words "from the debtor" be inserted.

The object of my amendment is that the debt should be clearly described as debt due from the debtor. When this Bill was drafted, there was then no talk about a joint debtor, but we have subsequently added a new clause 9A and in sub-clause (*2*) of that clause we find that it is only the amount due from the debtors——

Mr. H. P. V. TOWNEND: Sir, may we cut short the discussion by saying that Government are quite prepared to accept it?

The amendment was put and agreed to.

Babu SATISH CHANDRA RAY CHOWDHURY: Sir, I beg to move that in clause 18 (*3*), in line 1, after the word "debt" the words "except debt due under a decree of the Civil Court" be inserted.

My object is to keep the decree within the purview of sub-clause (*3*) of this clause. Now, sub-clause (*3*) enables a Board to determine the amount of the original loan and the amount of the interest. The consequences that follow are that if there is determination of the principal amount and of the interest, the Board can, working under section 19, sub-clauses (*b*) and (*c*), reduce the debt to the principal amount. That is the result, Sir, which will follow from this determination. Now, in so far as the decree is concerned, either it may be excluded from the operation of sub-section (*b*) or included, and if it is excluded, then it must be expressly stated in terms of my amendment—but if it is included within sub-section (*3*), the result will be that the Settlement Board will be called upon to go behind the decrees of the Civil Court, and, probably, in some cases the decrees of the High Court, if the matter is not brought up in an Appellate Court. So the Settlement Board sits in judgment over those decrees and on going behind them they have got to find out what was the original principal for which the particular creditor went to Court and obtained a decree. Apart from the fact, in many cases it would be impossible to do so because the Civil Court decree and the claim would only be in round number of the amount which was claimed or decreed. On the face of the decree or of the plaint it would not appear what was the original amount lent by the particular creditor, say some 10, 15 or 20 years ago. If the Board was to do it—and I would draw particular attention of the House to the words "shall determine the amount of the original loan"—it is obligatory on the Board to do so, and if they have got to do so, they will have to take evidence, to go behind those decrees and to

see the state of things which prevailed many years ago, and they will have to take the evidence of both the sides and the matter will be very much contested. As we have heard, that the object of the Bill is simply to have a settlement on the basis of an agreement or non-agreement, such cases cannot be contemplated by the Act and it will not serve the purpose which the Act has in view, viz., summary disposal of these matters. So, Sir, I think this knotty question of going behind the decrees and ascertaining what was the original amount at long distant past which was lent by the creditor to a particular borrower should be left out of this section. It will appear that under sub-clause (*l*) all that the Board has got to do is to find out the existence or amount of any debt, and the Board shall decide whether the debt exists and determine its amount. Then the proviso runs thus:—

Provided that the decree of a Civil Court relating to a debt shall be conclusive evidence as to the amount of the debt as between the parties to the decree. So that proviso cannot be called into aid in order to explain this sub-section as the proviso simply says that the Board will have to find out the total amount of the debt, but the Board will have to accept the Civil Court decree and no further. What they have got to do besides this is to determine the actual amount originally lent as well as the interest. So if the Civil Court decrees are dragged into this sub-section, as I have pointed out, there will be practical difficulty and injustice on the Board trying to unsettle things which have been settled. For all these reasons, I think the Civil Court decrees should be excluded from the purview of this sub-section. The Civil Court decree will be taken as being indicative not only of the amount of debt but the debtor's amount as the decretal amount also. With these words I commend my motion to the acceptance of the House.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, this is a very important clause in the Bill and Government cannot accept the amendment as proposed by Mr. Satish Chandra Ray Chowdhury. In one of my speeches I explained the significance of this provision. We have accepted the decree of the Civil Court as conclusive evidence as regards the debt itself, but the provision here is made for the purpose of going into the history of the debt, so that the Boards may be in a position to find out the actual state of affairs—viz., what is the amount the debtor has received, that is the original amount lent, what is the original principal and what is the interest so that they may come to a proper decision as to what should be a fair offer. The Civil Courts have got to decide these questions on the evidence that is placed before them and there the documentary evidence as to the contract made must be held to be absolutely binding and there can be no question of going behind these contracts. But before this Arbitration Board an opportunity should be given to the Board to go into the history of these negotiations so that they can find out what is the amount which a

creditor has so far received, what is the amount originally lent, and what is the amount still due from the debtor. These will enable the Board to make a fair and reasonable offer to the creditor for the settlement of the debt. Unfortunately, at the present time I have not got the facts and figures with me, but I stated a case in which the original amount lent was Rs. 150 or Rs. 200 and after payment of Rs. 300 to Rs. 400 the debtor was sued for something like Rs. 1,000. Now, in cases like these, it will not be possible for the Board to get at the facts unless they are permitted under clause 18 (3) to go into the past history of these debts. If the Civil Court decree is a bar to any enquiry, then the Boards can never get at the back of these things. In view of the above, I beg to oppose this amendment.

The amendment was then put and lost.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that in clause 18 (3), in line 3, for the word "shall," the word "may" be substituted and in line 4, after the word "excluding," the words "any portion of" be inserted.

The amendment proposes that there should be no hard-and-fast provision by which the Board must find out the original amount. According to the rule here laid down, it is that all interests which were included in the original principal at any time must be also separated and held to be the interest of the original loan. The Hon'ble Member has cited a case where a debt for Rs. 150 swelled up to Rs. 1,000. That certainly is a case which calls for condemnation from everybody and that is a case for which nobody will have any sympathy. There is another side of the shield. There may be cases where the original amount lent is only Rs. 25—I will not go into hundreds or thousands but I will deal with only two figures—and this amount of Rs. 25 was lent about 20 years ago and no interest has been paid practically, except a few small sums to avoid limitation. If at any time a part of the interest or of the principal is paid, there is a renewal of the bond and it is customary on such occasions to remit a portion of the interest, a small portion being included in the original amount. I think that such cases will certainly evoke sympathy even from the Board which is going to be constituted. In such cases the discretion of the Board should not be fettered in any way by the use of the word "shall." On the contrary, in such a case like this it should be left to the Board to use some discretion. With these observations, I commend my motion to the acceptance of the House.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I really fail to see what difference it will make by changing "shall" into "may," especially in the case which has been cited by Mr. Ray Chowdhury. The mere fact of deciding on the question of original principal does not mean that the Board is going ruthlessly in a hard case like this to

reduce the interest to nil. It will certainly not. As I said before, these facts are required for the Board to come to a decision as to what should be a fair offer on the part of the debtor; and in the case which I cited the other day the fair offer would be a heavy reduction of the interest, while in the case cited by Mr. Ray Chowdhury the fair offer would be a nominal reduction of the interest; that is all. I do not see what advantage the creditor will get if "shall" is changed into "may." Not knowing fully what was the original principal, as a matter of fact looking at it, it will prejudice the Board if they find that in a case where Rs. 25 originally lent swelled up to something like Rs. 500 at 12 per cent. if the interest has been added all the time. Well, if the debt shows that the original amount borrowed was Rs. 25 and the Board finds that the amount is now stated to be Rs. 500, they will immediately be prejudiced against the creditor and will be in favour of the debtor; whereas if all the facts are known and they show that the original amount of debt was Rs. 25 and no interest had been paid at all and that is why the amount swelled up, the sympathy of the Board will swerve round from the debtor to the creditor as the debtor had made no efforts to pay his debts and therefore he was not entitled to that amount of reduction which another man who had been trying his level best to pay the interest and because the rate of interest was high he could not pay and so the amount had swelled up. So, I do not think the creditor will at all benefit by this change and after all there will be no material advantage gained by making this change. In view of what I have said, I beg to oppose this motion.

The amendment was then, by leave of the Council, withdrawn.

Short-notice amendment after No. 319.

Mr. H. P. V. TOWNEND: Sir, with your permission I beg to move the following short-notice amendment:—

That in clause 18(3) in lines 6 to 8, the words "and difference between the original principal and the amount of the debt shall be deemed to be the arrears of interest due thereon" be omitted.

Sir, this is a purely drafting amendment. The fact is that we did not realise until the other day during the course of the debate that no provision had been made in sub-clause (3) for cases where there had been decrees of Civil Courts. Of course when there is a decree of the Civil Court, the decretal amount is made up not only of the principal and interest but also of costs and perhaps damages. If we say that when a debt covered by a decree of the Civil Court is analysed everything which is not original principal must be declared to be "interest," we are including as "interest" the costs and damages and we are saying something which is absurd. So we have sought to put this rightly

omitting the last sentence which is not really needed, because the sub-clause deals with the determination of original principal for the purposes of clause 19(*1*)(*b*) and does not merely explain sub-clause (*2*) of clause 18.

The amendment was put and agreed to.

Kazi EMDADUL HOQUE: I beg to move that in clause 18 (*3*), last line, after the word "thereon," the words "provided the interest has been calculated at rates prescribed by the Bengal Money-lenders Act, 1933" be added.

Sir, we have been given to understand that this Bill has been undertaken to give accommodation to the agricultural debtors. If that be so, let them have accommodation in all respects and in all possible manner whatsoever. Now, what we generally find is that when the debtor makes a default in payment of interest, the interest accrues from time to time and is incorporated in the principal debt. When the creditor after a few years finds that the debtor has not paid any interest which has accrued, he then demands a fresh bond and in this bond the interest is added up with the principal and so the principal and the interest become a new principal. In this way if a few years go on, and then again he makes default, a second fresh bond is taken from the debtor, and in that also the interest that has accrued is added to the principal which includes interest also. So the interest goes on from time to time forming part of the principal. Now this clause says that in such a case, the interest included from time to time in the principal would be excluded. The original debt will be taken to be the principal debt, and the interest will be treated as the stipulated interest. Now, my submission is that if the stipulated interest be very high, so high that under the Contract Act it is deemed to be a hard and unconscionable contract, and if that interest be allowed to stand, then if any deduction is made in the debt that will not give any appreciable relief because if the interest be very high that interest itself will injure the debtor. If that is allowed to stand and if any reduction is made in the total debt that will not give him any substantial relief whatsoever. My suggestion, therefore, is that the interest be also calculated according to the Bengal Money-lenders Act of 1933. There the rate of interest has been prescribed. I say whether the debt has been contracted before the passing of the Money-lenders Act or thereafter, the interest on this bond should be calculated according to the scale laid down there. If that be done, then great relief will be given to the debtor. Otherwise, if a huge interest accrues and that huge interest be allowed to stand, and then reducing the total debt by a certain sum that will not give him real relief. I desire however that

in the matter of interest the debtor should be given adequate relief as has been prescribed under the Bengal Money-lenders Act. I, therefore, hope that the Hon'ble Member will accept my motion."

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, the other day the Kazi Sahib moved an amendment which on examination was found to be actually definitely against the object he wanted here, and to-day, Sir, he has moved an amendment which is absolutely, I may say, meaningless. There is no question here of reduction of interest; there is no question of reduction of principal. All that this clause provides for is to ascertain what was the original amount that was lent, and the difference will naturally be the interest *plus* the cost of any decree or damage awarded by the Court. If there is any decree of the Court, that will be *plus* the amount of interest due. There will not be any third thing as interest calculated on the basis of the Money-lenders Act. Let me give an example, an amount decreed or the amount claimed is Rs. 500, the original amount lent was Rs. 50, in that case we want to find out how the amount came to be Rs. 500, and we ascertain that under the original transaction it was Rs 50. After three years it was renewed for Rs. 150 and after four or five years it was renewed for Rs 350, and so on. So the original principal was Rs 50 and the rest Rs. 450 was interest. There is no question of calculation. It is ascertainment of actual facts. What is the difference between the original principal and the amount claimed? I submit this amendment has got no meaning whatsoever and cannot be given effect to here. Therefore I oppose it

The amendment was, by leave of the Council, withdrawn.

Babu KHETTER MOHAN RAY: I beg to move that after clause 18 (3), the following proviso be added, namely :—

"Provided that in determining the original principal of a debt, the Board shall not reopen any agreement purporting to close previous dealings and to create new obligation, which has been entered into by the parties at a date more than six years from the date of the application to the Board for settlement of debts and the Board shall not in any proceedings under the Act, demand production of any document or account books relating to period prior to six years from the date of the application referred to above."

In determining the original amount the Board is entitled to call for any papers extending over some 25 or 26 years previous to the application. It will cause needless harassment to the creditors, especially when there are so many contracts, solemn contracts entered into between the debtor and the creditor. When the accounts are

stated, it is generally shown on the face of the bond, that is the bond that comes into existence as a result of the stated accounts, in that bond generally the amount of the original principal of the debt is stated. If you go to reopen these contracts and go beyond it and pursue your investigation for 25 or 30 years, it will be a fruitless search because these papers will not be forthcoming. As soon as these accounts are stated, they are not retained over three or five years; they are not preserved. These money-lenders have not got a systematic record room for preserving these documents, these khattas and all these things. Consequently, they will be put to a disadvantage especially when the Board is empowered to scale down the amount of the principal debt as well as the interest. It is not necessary to go into these questions beyond the period of the stated account. Therefore, my resolution wants that any transaction, which takes place six years before the date of application, should be taken as the basis on which settlement should be made, and the creditors should not be asked to produce their documents or accounts which may not have been preserved for a long time. For all these reasons, I move this motion.

Mr. SARAT KUMAR ROY: Sir, I rise to support this motion. It is well known that where debtors fail to pay up their dues and the period of limitation for instituting suits is about to expire, it is for the benefit of the debtors that the creditors agree to accept fresh contracts from them. It is quite natural and equitable that the whole claim due at that time is put as the principal of the new debt and if such a thing had happened more than six years ago, is it fair, Sir, to reopen the arrangement now? Both parties agred to the new arrangement and have submitted to it for six years thereafter, and, moreover, the arrangement was entered into more for the benefit of the debtor than for the benefit of the creditor; under such circumstances, Sir, I do not think it at all fair to treat such arrangements as null and void.

The amendment before us proposes to fix a time-limit beyond which arrangements made for renewal of debts should stand, and I think, Sir, a period of six years is quite reasonable and a long one to confer on the arrangement a certain amount of sacredness which ought not to be lightly treated. Moreover, Sir, the long period that will intervene is likely to exclude attempts on the part of creditors to take undue advantage of weak position, if any, of debtors. So, Sir, I consider the amendment to be very fair and equitable and I, therefore, support it wholeheartedly.

Babu HEM CHANDRA ROY CHOUDHURI: I oppose this motion. The work of the Board will not only be to scale down the debt of the debtors, but it will have to adjust the claims of the different

creditors amongst themselves, in cases where the assets of the debtor will not be sufficient to meet claims of all the creditors. If the Board is empowered only to reopen the agreement which has been entered into within 6 years, then the Board will have no opportunity to find out what was the original amount lent more than six years ago and in that case, the Board in order to come to a decision as to what is the amount of interest which will have to be reduced, will have to take into account the amount of interest which has accrued during the period after the date of the original loan and the date six years before the application as the principal. Whereas in the case of another creditor who has lent money during six years from the date of the application the original amount which has been lent will be taken as principal. For the sake of adjusting the claim amongst the creditors themselves, the Board should have power to find out the original amount which has been lent to the debtors. Babu Khetter Mohan Ray says that the money-lenders do not keep their account books more than five or six years. I do not think, Sir, that is a fact, but it is a fact that the small creditors have no account books but those who have account books preserve their accounts for ten or twelve years, and if there be no account books, and the Board is satisfied that these books do not exist, then the Board in absence of other evidence will have to accept the amount stated in the bond as the principal amount lent. So I do not think it advisable not only for the interest of the debtor but also for the interest of the creditors, especially honest creditors, that this amendment should be supported.

The Hon'ble Khwaja Sir NAZIMUDDIN: I think that after Mr. Hem Chandra Roy Choudhuri's reply there is not much for me to add. I would only say this, that if any particular creditor has not preserved his accounts and cannot produce them, the Board will then do as best as they can to come to a decision. Even if there is no mention in any record or any admission or there is nothing at all to show what the original amount was, then the Board may have to accept what the man claims.

The amendment was then put and lost.

Mr. H. P. V. TOWNEND: I beg to move that in clause 18 (*4*), line 1, for the words "under this section," the words "under sub-section (2)" be substituted.

This again is a drafting amendment; the reason for this is that at an earlier stage when we were discussing the definition certain members of this House spoke as if the Board would be entitled under this clause to fix the amount of the debt and as if that decision could not be challenged anywhere even if no award was made, and that was not the

intention. There is no reason why anything should be allowed to remain in the Act which might give such an impression to anyone. It is quite clear that the only thing that is going to be challenged in the Civil Court is the distribution of the debt between interest and principal. So I move my amendment.

The amendment was then put and agreed to.

Babu KHETTER MOHAN RAY: Sir, I beg to move that after clause 18 (*4*), the following proviso be added, namely:—

"Provided that if a debtor does not pursue the application after such determination, the Board shall upon the application by a creditor, make an award for the entire amount so determined or else such determination of debts will cease to subsist and the parties will be relegated to the original position."

It simply says that if a debtor does not deliberately pursue the application, the Board has no power to make him do it. So I think that the Board should be empowered to deal with a case like that. If a debtor does not come before the Board within the appointed time to place the facts on which the debts can be scaled down, then the Board in the absence of the debtor cannot scale down the debts or ask the creditor to accept the settlement. In these circumstances certain provision should be made in the Act so that when there is a default on the part of the debtor to pursue his remedy the Board should have certain powers to deal with the application. The party should be relegated to the former position or should make a settlement of the debt if the creditor wants it.

Babu SATISH CHANDRA RAY CHOWDHURY: I wish to support this amendment for another reason. It will be something like gambling on the part of the debtor. If a debtor files an application for the settlement of his debts and finds that the award is to his disadvantage, he may stop proceeding any further. Then the position will be that when the creditor goes to the Civil Court he will be bound by the determination of the Board as if it was a decision of a Court. So I say the debtor may get a determination from the Board on the offchance that it will be used against the creditor, but he may not proceed further. And when the creditor takes the matter to the Civil Court this determination will checkmate him and the effect will be to delay all proceedings. I, therefore, think that there will be no opposition from the other side.

The Hon'ble Khwaja Sir NAZIMUDDIN: The amendment that has been just now moved by Mr. Townend and accepted by the House

does not in any way bar or stand in the way of a civil suit if there is no award. That is to say the creditor and the debtor revert to the ordinary position before the determination and can go to the Civil Court if there is no award. So the contention of Mr. Ray Chowdhury does not hold good.

As regards the contention of Khetter Babu, all I have to say is this: What does he mean by the words "he does not pursue the application?" At that stage the question is of compromise offered from either side and either party can refuse. Supposing the debtor finds that the creditor is not prepared to accept an offer which the debtor thinks is a fair and reasonable offer and he does not turn up, would it be fair to declare the whole sum as fully due and an award made to that effect and the creditor allowed to realise it by means of the certificate procedure? That is not the object of the Bill: that will be absurd because the reverse will not hold good, namely, if the debtor makes an offer and the creditor does not accept, the award will not be made on the terms which the debtor offers

Babu KHETTER MOHAN RAY: If neither the debtor nor the creditor offered any terms, what result will follow?

The Hon'ble Khwaja Sir NAZIMUDDIN: That is a thing which it is very difficult to conceive The amendment that has been accepted will exclude the possibility of what I have said. It is an impracticable amendment in my opinion and, therefore, I beg to oppose it.

The amendment was then put and lost.

The question that clause 18, as amended, stand part of the Bill, w put and agreed to

Clause 19.

Mr. H. P. V. TOWNEND: Sir, I beg to move that in clause 19(*1*)(*b*), line 1, after the words "when creditors to whom," the word "there" be inserted.

This is merely a grammatical correction.

The amendment was put and agreed to.

Babu KHETTER MOHAN RAY: Sir, I beg to move that in clause 19(*1*)(*b*), lines 1 and 2, for the words "forty per cent.," the words "fifty per cent." be substituted.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I beg to oppose the amendment.

The amendment was then put and lost.

Mr. SARAT KUMAR ROY: Sir, I beg to move that in clause 19(*1*)(*b*), line 1, for the word "forty," the word "sixty" be substituted.

It is our duty to guard against all possible acts of dishonesty, whether such dishonest acts are apprehended from the creditors or from the debtors. It is not uncommon that dishonest debtors set up their friends as creditors and falsely admit that they owe large sums of money to them; so that these friends may take away a large part of the assets for the benefit of the debtors themselves. We ought to discourage such collusive conduct on the part of the debtors and the safest means of securing that object, I think, is to lay down that any compromise in order that it may be binding upon the other creditors, who do not agree, should be agreed upon by the creditors to whom is owing the largest part of the debt. Sir, I think it is fair to lay down that the consenting creditors must be those to whom not less than 60 per cent. of the total debts is owing. If you fix it at 40 per cent., it would be easy for the debtor to set up his friends as creditors showing that to these is owing such 40 per cent. of the total debts. If you fix it at a higher percentage, this task will involve setting a larger number of friends and hence will put some difficulty on the dishonest debtors. So it is advisable to enlarge the percentage to 60.

The Hon'ble Khwaja Sir NAZIMUDDIN: There are two safeguards against any possibility of fraud: one is that the Board has to give a certificate or come to a decision that the offer was a reasonable and fair offer. May I read out the clause? "..... ...the Board if it is so empowered under section 7 and if it considers that an offer made by the debtor for the settlement of any debt not included in the amicable settlement is a fair offer which the creditor concerned ought reasonably to accept may pass an order that the debt to which the offer relates shall be settled in accordance with such offer."

There is ample safeguard there; first of all it has got to be a reasonable offer, secondly, it has got to be accepted by the creditor and, thirdly, in that case they may pass an order. So the question of fraud does not come in. The question of hardship of the creditor who has got 60 per cent. of his money back does not also come in. On the top of that there is the appellate officer. Even if a Board is prejudiced against the creditor, he has got the right of appeal and if the appellate officer thinks it was a fair offer which the creditor should accept, then there is no reason why he should not accept it. I, therefore, oppose the amendment.

The amendment was then put and lost.

Babu JATINDRA NATH BASU: I beg to move that in clause 19 (*1*) (*b*), in line 1, for the word "forty," the word "seventy-five" be substituted.

The Hon'ble Member in replying to the last amendment has said that if there is any fraud then there are safeguards, namely, that the Board has to certify and, secondly, there is the Court of Appeal. Experience in similar matters would have shown him that where a procedure is laid down in a piece of legislation dealing with the settlement of debts and such procedure concerns an amicable settlement on the basis of what the creditors agree by a certain percentage it is extremely rare that either the original Court or the appellate authority interfere with the decision that is arrived at. If he had been a practising lawyer, he would have known that not even 1 per cent. of the cases are interfered with either by the Court or by the appellate authority. It is, therefore, essential that when a procedure is laid down, it should be laid down in a manner which will not cause hardship to the creditor. Because the settlement that is contemplated by this clause is settlement with the consent of the creditors, or at least a large body of creditors. In the Insolvency Acts, Sir, the provision as regards settlement is that the number of creditors who agree to a composition should be numerically at least 50 per cent., and so far as the amount of the debts payable to them is concerned, the creditors who agree to that settlement should have 75 per cent. of the debts owing to them. I put the figure 75 per cent. to bring it into line with similar legislation that is now in force. Otherwise, it will come to this, as has been hinted by the last speaker, that it is not the decision of the Board or the decision of an appellate authority that will be forced on the general body of creditors, but it is simply the decision of 40 per cent. of the creditors. So, it is the decision of 40 per cent. of the creditors that is intended to be made effective on the remaining 60 per cent. This, Sir, is a kind of minority rule, which, I think, should, as far as possible, be avoided. If you extend this principle to other pieces of legislation the result might be that a group of members constituting say 40 per cent. of this Legislature will some day seek to enforce their voice on the remaining 60 per cent. Such a thing, Sir, no system of law can ever contemplate or countenance. The figure 75 per cent. that I have put in my amendment has, in fact, been taken from the insolvency legislation. It is no innovation of mine. So I submit that here you are seeking to make the general body of creditors accept a certain composition not because the Board or any Appellate Court, irrespective of the creditors' opinions, fixes a certain proportion for the settlement, but if only 40 per cent. of such creditors say that they will accept a certain offer made to them they will be able to force other creditors to accept that offer. This, I submit, is a procedure which ought not to be accepted. Every law

dealing with questions like these provides that the proportion of the creditors should be more than 50 per cent. and the amount of their claim should be at least 75 per cent. of the total debt. I urge, therefore, that this is a reasonable proposition, and I commend it to the acceptance of the House.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Sir, Babu Khetter Mohan Ray wants the percentage to be raised to 50 and Mr. S. M. Bose, who went a little further, wants it to be fixed at 60, and now the unkindest cut of all comes from the most unexpected quarter, viz., from our leader, Mr. Jatindra Nath Basu, who wants that unless 75 per cent. of the creditors behave in a certain way the Board should not take any action. Sir, I may be permitted to say that Mr. Basu's experience is confined mostly to big debtors and big creditors with large amounts at stake, chiefly in Calcutta, where the stakes are not only big but where the frauds committed are on a very large scale also. This Bill is really intended for a very simple class of people, who are illiterate and who require protection and who do not know the ways of the Insolvency Act and of the various sorts of frauds. (BABU JATINDRA NATH BASU: The Insolvency Act applies to places outside Calcutta also.) Now, Sir, this 40 per cent. does not really constitute a minority rule, as has been stated by Mr. J. N. Basu; but it is only an indication to the Board that the manner in which the settlement is made by the 40 per cent. of the creditors is fair. There is a further safeguard lower down, where it is said that in the case of other people the debt should not be reduced to an amount less than the principal and should not, in any case, be less than what 40 per cent. of the creditors accept. Therefore, there is a sufficient safeguard for all the other people also, and no question of fraud arises here; as a matter of fact, in the villages even if the *mahajan* gets the entire amount of the principal, in 75 per cent. of the cases they will be satisfied; because if the debt has continued for any length of time, they must have realized a sufficient amount of interest and profit from the debtor already. And, even now, if they can get an amount which is not less than the principal, they will be satisfied. Therefore, Sir, I do not think that there is any harm done by laying down the principle of 40 per cent. as in the Bill. I oppose the amendment, Sir

Maulvi RAJIB UDDIN TARAFDER delivered a speech in Bengali opposing the amendment, the following being an English translation of his speech :—

Mr. President, Sir, I protest motion No. 344 moved by Babu Jatindra Nath Basu. Hon'ble friend, the mover, wishes that 75 per cent. instead of 40 per cent. of the creditors should agree to the settlement of the debt of a debtor before the Board and the remaining 25

per cent. may then be compelled by the Board to accept the settlement. But my friend has not considered how serious is this matter. I think that it is very difficult to bring 40 per cent. of the creditors to one opinion and fix its place, if 75 per cent. of the creditors are to be agreed upon, then the Bill will be quite unworkable. I quite understand the mentality of the village *mahajans*, and it is simply troublesome to bring one of them to agree. In its place we should understand, how difficult it will become for poor debtors to agree to so many creditors. It would have been somewhat possible in the reign of Ram Chandra in Ajodhya or Harun-ul-Rashid of Bagdad. In a country where the creditors do not care to sell the properties of the debtors, the creditors should not be given so much advantage and the debtors should not be allowed to suffer so much inconvenience. For the above reasons I beg to protest the motion and hope that the hon'ble member will please withdraw his motion. I think, if he withdraws his motion, the members of this House will all praise him instead of condemning him.

Mr. H. P. V. TOWNEND: Sir, I would like, if I may, not so much to reply to the arguments advanced by Mr. J. N. Basu as to go into some facts as regards the experience gained in the Central Provinces. There, a system very similar to that proposed has been working. It is the only place, regarding which we have information, where the provision for agreement as to 40 per cent of the debts due has been in working operation: and it would obviously be wise to see how the provision actually works there. I think that this would be very much more relevant than anything derived from the Provincial Insolvency Act, which is a very different matter. With your permission, therefore, I should like to read some extracts from the reports on the working of these Boards. The Chairman of one of the Boards - I am quoting from the report of the Narsinghpur Board—says as follows:—

"The 40 per cent limit prescribed by section 12 has disabled the Board in some cases from giving relief to a debtor who could easily pay off his debt within a reasonably short space. The creditors in such cases being sure of recovering every pie of their claim through the Civil Court were found to have made a common cause to ruin the debtor by putting up a joint front. The section may be made more useful" (this is rather interesting) "in serving the object of the Act if amended so as to reduce the limit to 10 per cent., if not done away with altogether."

Then, Sir, in the report of the Khurai Board we find the following remarks:—

"A large number of cases in which property was under mortgage could not be settled because of the stubborn attitude of the creditors in refusing to accept fair offers..... The creditors were hard to deal

with, and although they knew well that debtors were not in a position to satisfy such claims unless facilities were offered, they preferred to take the property rather than wait weary years to recover the same in instalments..... In a number of cases, where both secured and unsecured creditors were concerned, the former class of creditors took this attitude mainly for the reason that they would not like to be doled out along with unsecured creditors in repayments."

Next I come to the comment made by Mr. Darling, who went into the matter when he was investigating the question of rural credit in the Central Provinces on behalf of the Reserve Bank. He says this in his note on the Chindwara Board:—

"Section 12 of the Act provides that the creditors to an amicable settlement must not have less than 40 per cent. of the total debts due to them: there should be no limit as it leads to abuses, money-lenders combining collusively or perhaps one money-lender persuading another not to agree."

Sir, there are very definite opinions based on working experience in the Central Provinces. Now I would quote an opinion based on another class of experience. When the Subdivisional Officer of Chandpur was commenting on the proposed Bill of the Board of Economic Enquiry, he expressed the opinion, based on experience of the work done by the Boards arranging amicable settlements in Chandpur, that the weak point in the draft Bill was this 40 per cent. limit—I should say rather, the 60 per cent. limit proposed by the Board in one of their draft clauses. The point is that if the Central Provinces Act frequently proved unworkable with a limit of 40 per cent., how on earth are we to expect the Bill to work if there has to be agreement as to 50 or even 75 per cent. of the debts before the Board can pass orders? I think it is quite impossible. Sir, I beg to oppose this motion.

Mr. S. M. BOSE: Sir, Mr. Townend has quoted the Central Provinces Act and he has also quoted the report on the working of the Central Provinces Act; apparently the Central Provinces Act is sacrosanct to him. But will he kindly explain why the sections of the Central Provinces Act have not been incorporated in other clauses in the Bill before us There are vast differences between the present Bill and the Central Provinces Act. When it suits the Government, then they trot forward the relevant portions from the Central Provinces Act. But when we refer to the provisions which go against the Bill, they are silent. The Central Provinces Act is a very good thing for them to quote when it is in their favour. I submit that when you are interfering with certain well-established rights, you must be satisfied that a large number of creditors do really want the thing to be done. In clause 19(*1*) (*b*) we find it is laid down "when creditors to whom is owing not less than forty per cent. of the

total secured or unsecured debts, as the case may be," etc. As has already been pointed out, the minority can lead the majority by the nose. A majority of forty per cent. may, if they so choose, dictate to the other sixty per cent. This is a new thing altogether. We have certain precedents to follow. There are well-established precedents in the Provincial Insolvency Act not of Central Provinces, but which is applicable to villages in Bengal, and the Presidency Insolvency Act which is applicable to towns. I submit that these principles have been well tested and for a very long time not only in towns but also outside towns, and there the rule is—I think it is section 38(2) of the Provincial Insolvency Act—that creditors fifty per cent. in number and seventy-five per cent. of the amount in value may come to a certain arrangement; even then that is not binding on the parties. Then sub-section (5) says that even if more than fifty per cent. of the number and seventy-five per cent. of the value of the creditors agree, then the Court is not bound under sub-sections (5), (6) and (7), where it is clearly laid down that the Court must be satisfied about those terms and the Court may under sub-sections (6) and (7) refuse to accept the arrangement accepted by that majority of fifty per cent. in number and seventy-five per cent. in value. So, Sir, that shows how careful the Courts are in these matters; and as I have already said, these principles have been well tried and have stood the test of time and they ought to be followed rather than the new Central Provinces Act or what has been done in Chindwara, Sohaga or Tibet.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Sir, the question now before the House is whether instead of forty per cent. we should have seventy-five per cent. Mr. Townend has enlightened this House that in the Central Provinces forty per cent. of the creditors have never combined and the Act has practically become inoperative there on account of this disadvantage. The only section probably that will be acted upon and will have any value here is section 20. I think the fear of my friends, the Basus, that the 40 per cent. of the creditors will dictate to the other sixty per cent. is not justified. Human nature is known to my friends the Basus to be human nature. I do not believe for a moment that forty per cent. will combine to do injury to the remaining sixty per cent. That being the case, their fear is not at all justified. If instead of forty per cent. the Government had proposed ten per cent., I think that would have been a fair proposal. I do not know why Government stuck to forty per cent. after they received the report from the Central Provinces, because it worked disadvantageously there. However, as section 20 will stand, even if all the other sections go, it will give some relief to the debtors. So, I think that in the light of the discussion my friends will now see their way to withdraw their motion instead of pressing it to a division.

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur: Sir, there would have been no objection if the number of creditors as also the total amount of the debt were taken into consideration at the same time. Clause 19 (*1*) (*b*) of the Bill provides that the total amount of debt should be forty per cent. and there is an alternative provision in sub-clause (*c*) that the total number of the creditors should be sixty per cent. There would not have been any objection on our part if these two factors be taken simultaneously and not as alternative conditions. As my friend, Mr. J. N. Basu, has pointed out, in the Insolvency Act all these points are considered together. I have been told also that in certain cases after consideration of these two factors, a composition is made when the debtor wants amicably to settle with the creditors. Sir, it is not a theory only. We are not labouring under any vague theory but as a practical proposition, which we have found in everyday life and in the existing law, I suggest this. In the Bill two alternative proposals have been made, viz., either the number should be taken into account or the amount should be considered. We would not object even if the forty per cent. be reduced to thirty or sixty to fifty; but what we want is that both these factors should be considered simultaneously and not as alternative proposals. Moreover, the majority rule should be followed. Here in the Bill forty per cent. of debts have been considered as a criterion for the determination of award, neglecting 60 per cent. This is very unreasonable In the civilised world everything must be decided on majority.

The amendment was then put and lost

Maulvi ABUL QUASEM: I beg to move that in clause 19 (*1*) (*b*), lines 2 and 3, for the words "total secured or unsecured debts, as the case may be," the words "total debt" be substituted.

Sir, in my humble opinion if the Bill is to be worked smoothly, the distinction which is sought to be inserted by this clause should be done away with. I do not wish to waste the time of the Council by a long speech, but I do strongly feel that in the interest of the practical working of the Bill the difference is undesirable and unnecessary and should therefore be omitted.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, Government is going to accept this amendment for the following reasons:—

In the light of experience in the Central Provinces as to the difficulty in getting forty per cent. of the total debt covered by agreement,

it would be extremely difficult in Bengal to get forty per cent. of secured debts and forty per cent. of the unsecured debts covered by agreements.

The Chandpur reports show that it is unusual for a debtor to have many creditors: probably the same would be true in other districts. If so, the clause as it now stands in the Bill would be practically unworkable.

The provision made by the Select Committee overlooks the fact that the Board would not be considering each debtor's case as if it were an isolated case, but would be dealing with a great many debtors and creditors whose cases would fall into groups. What would be fair in any particular case would be decided in the light of agreements reached in other cases and not only on the basis of the case under consideration. An offer would be regarded as fair in one case because similar offers in similar cases had been considered fair already.

The Select Committee decided that if there was a reference to "secured and unsecured debts," it would be necessary to have a definition. The definition is given in their *Explanation*. It contains a reference to rents being classed as secured debt. Here there is a practical difficulty in rent being classed as secured debt as it cannot be reduced beyond the original principal. Therefore, clause 9 (*c*) will be practically inoperative, because even if there is a 60 per cent. reduction, we cannot reduce the thing beyond the original principal, as rent cannot be reduced beyond the original principal. Similarly, there will be other practical difficulties on the ground that rent will come under the category of secured debt In view of these practical difficulties, Government have decided to accept the amendment of Maulvi Abul Quasem. They feel that if this amendment is not accepted and the clause altered accordingly, the provisions of this clause will be practically useless. That is to say it will not operate at all. It may be as well to leave it out as to leave it there in the form in which it has emerged from the Select Committee. And this we have come to realise only after close examination of the facts from the reports from the Central Provinces and Chandpur. I would specially lay emphasis on the fact that in all cases where the number of creditors is only one or two, this clause will have no meaning whatever. This presupposes a large number of creditors, and therefore the analogy which Mr. Basu has been putting forward as regards the insolvency procedure in insolvency cases does not apply. But here the case is quite different. Here, apart from the creditor, there is also the debtor himself who has a big say in the matter, and besides that the object is not to distribute the property as it is in the case of composition. The two objects are quite different. In the case of insolvency composition the object is to distribute the entire proceeds among the creditors, his very many creditors.

Here the object is an equitable payment of the debts among the various creditors, and at the same time reduction of the debt to enable the debtor to pay the amount.

Babu KHETTER MOHAN RAY: What is the difference?

The Hon'ble Khwaja Sir NAZIMUDDIN: There is this difference—in the one case it is capital, and in the other it is income. Therefore, the analogy does not hold good. These are the reasons which have induced Government to accept the motion of Maulvi Abul Quasem.

Babu JATINDRA NATH BABU: The Hon'ble Member has referred to practical difficulties, and also to certain aspects of composition in insolvency procedure. Sir, ever since the dawn of history there has been a difference between a secured debt and an unsecured debt. That has always been given due attention to in any administration of the assets of debtors. Here, the line of demarcation between secured and unsecured debts is sought to be done away with. I do not understand what the practical difficulties are, but the Hon'ble Member has referred to the experience that officers had at Chandpur, and to certain records in his office. Those have not been placed before us, to enable us to judge as to whether there is any justification in actual practice in doing away with the difference between a secured debt and an unsecured debt. A secured debt stands on this basis. If there is mortgage of a property by a registered deed or otherwise or if a man had sold a property, then the transferee could not have been proceeded against and the sale cancelled for the purpose of getting hold of the property as assets of the debtor for the purpose of satisfaction of his debts. The mortgage is a first charge, and a transaction of that nature should not be done away with in the way that it is sought to be done away with under this Act. The difference between a secured debt and an unsecured debt should always be allowed to remain. For instance, in the case of movable property—because these agricultural debtors will be trading with the crop they produce—there is a charge when he has mortgaged to the seller or there is unpaid purchase money and things like that. This will be interfered with and the object appears to be that secured and unsecured debtors should be placed on the same footing. As regards composition, I may call the Hon'ble Member's attention to what happens when there is a composition of debts of a debtor. One or more trustees are appointed and a certain part of the debtor's property is transferred to the trustees for the benefit of the creditors. The trustees find they can pay 50 per cent. or 75 per cent. or whatever percentage it may be of the total debts. In a great many of these cases a certain

proportion of the assets is left to the debtor himself to enable him to go on with, to start life again. That is what happened in ordinary composition amongst Indian traders. Thus where a man has property worth Rs. 100, say property worth Rs. 20 is left with him to enable him to start life. The balance Rs. 80 is made over to the trustees who ascertain the debts, realise the assets, if there are any, and distribute the money amongst the creditors. That is what happens. It is not as the Hon'ble Member says that in composition the entire assets are availed of for the purpose of distribution amongst the creditors. No doubt, if there is insolvency, or in the case of a Company, if there are liquidation proceedings, the entire assets are available for the purpose of payment of debts, secured debts having priority over unsecured debts. That priority is sought to be done away with in the amendment proposed by Maulvi Abul Quasem. I submit that in view of the general principles of law which governs transactions of this nature, the amendment should not be accepted.

Mr. S. M. BOSE: I am surprised, amazed and astonished at the somersault of the Hon'ble Member. As a member of the Select Committee I must protest against this. Only yesterday the Hon'ble Member told us when opposing my amendment to delete clause 13, sub-clause (3) that he stood by the Select Committee's recommendations as a rule. Here is a question of principle (not merely a drafting amendment) which has been accepted by him and acted upon; and now through a private member, Mr. Abul Quasem, that arrangement is going to be given the go-by to. Sir, I say again this is a most extraordinary thing. I know that Government like Corporations have nobody to be kicked and no soul to be damned. They are not bound by any pricks of conscience. I say that this is entirely wrong. I want to give one example. An agriculturist has unsecured debt to the extent of Rs. 6,000 and secured debts to the extent of Rs. 1,000. The unsecured creditors know that they cannot get Rs. 6,000 or anything like it. Forty per cent. of the unsecured debts to the extent of Rs. 2,400 agree that 4 annas in a rupee should be paid. That agreement is to bind the secured creditors. To avoid that very thing this amendment was inserted—that 40 per cent. of the total on each account should be agreeable. If the amendment is accepted as it is proposed to do, then it is open to the unsecured creditors to do away with all mortgages secured, and all charges, liens, etc. They know very well they stand in a very unsafe position. They may get very little or nothing. Whatever they get, they will be thankful for. The 40 per cent. are jealous of the property given to the secured creditor. Forty per cent. creditors to the extent of Rs. 2,400 say, "give us 4 annas; we will give *salam* and thanks." That settlement is forced down the throat of the secured creditors. That is serious interference. It is giving the

go-by to security. As I have said, this is a question of fundamental principle, and the Government, I submit, ought not to agree to go back on their words. I oppose this amendment.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: After hearing what Mr. S. M. Bose has said, I see a real injustice is being done to the creditors if the distinction between the secured and unsecured creditors is done away with. We are here to purify, if possible, any wrong that is done. When I say this, I hope I will not be misunderstood by anybody. Mr. Bose gave an illustration saying that if the amount of unsecured debt is Rs. 6,000 and of the secured debt Rs. 1,000 and the value of the total property was not more than Rs. 2,400, then those who have got unsecured debts will be quite ready to receive any small amount that might be given to them. If you now say that their decision will be forced upon the secured people, it is wrong. I think we will not be justified in doing away with the two clauses by a stroke of the pen here, forgetting all the provisions in other laws. I hope Government will reconsider the matter and will not do injustice in any way to secured creditors as has been pointed out by Mr. S. M. Bose. With these few words I beg to oppose Maulvi Abul Quasem's amendment.

Babu HEM CHANDRA ROY CHOUDHURI: I rise to oppose this amendment. It is really regrettable that Government should go back upon the main principle which has been accepted in the Select Committee. One of the main principles of this Bill is the amicable settlement and the procedure of that amicable settlement has been embodied in this clause. If the amendment moved by Maulvi Abul Quasem be accepted, the result will be that secured creditors will be led by the nose by the unsecured creditors. In cases where 39 per cent. of the total debt will be unsecured debts, the unsecured creditors will not get anything if the value of the property of the debtor be taken into consideration. Then there may be an unholy combination with one of the secured creditors. If the amount of total debt exceeds 40 per cent. of the unsecured debts they may combine and compel the secured creditors to accept the compromise. The unsecured creditors may be satisfied with any amount they may get under the award because if the secured creditor forces his claim and gets the property sold, it may be that nothing will be left for the unsecured creditor. Hence, it will be to the interest of the unsecured creditor to reduce the claim of the secured creditor to a negligible amount. Otherwise, he will not get anything. So I think it will not be proper on the part of Government to do away with the recommendation made by the Select Committee. This point has been thoroughly discussed in the Select Committee and the pros and cons of it were thought over by Government, and after due consideration Government accepted this principle. Now on flimsy grounds that there

will be difficulty in practical working Government should not do away with that recommendation. What may be the practical difficulty in the administration of this Bill when passed into Act? If this clause remains as it is, the Board will have the right of settlement of all debts both secured and unsecured and if the secured creditors owning 40 per cent. of the debts agree then the Board, if the terms are found fair and reasonable, may compel them to accept that term. Even if 40 per cent. do not agree, Government has a weapon by way of issuing a certificate under clause 20. If clause 20 remains, there will be no difficulty in dealing with the cases when the creditors do not agree to make them accept a fair and reasonable term. In view of clause 20, I think the question of 40 per cent. or 50 per cent. or 60 per cent. or 75 per cent. does not come in. Take for instance a case in which 40 or 60 per cent. of the creditors will not assist, the Board will still be competent to grant a certificate to the debtor if the creditor does not agree to the reasonable term offered by the debtor. I, therefore, request Government to reconsider this position and to see that the recommendation of the Select Committee be not thrown to the wind on such flimsy grounds.

Mr. H. P. V. TOWNEND: Sir, I will first deal with the remark made by Mr Hem Chandra Roy Choudhuri that he regrets to see the Hon'ble Member "going back on the main principle of the Bill." But I would like to put it thus: the Hon'ble Member has gone back not "on" but "to" the main principle of the Bill, because the main principle is that we must have a workable Act. In my speech on the last amendment I quoted facts to show that it has been difficult to get agreement as to 40 per cent. of the total debt in the Central Provinces: and it is obvious that further restrictions—agreement regarding 40 per cent. of the secured debts before a Board can pass orders about a secured debt and regarding 40 per cent. of the unsecured debt before it can deal with any unsecured debt—would make action not merely difficult but, for all practical purposes, impossible This is not going to be a workable Act if the clause stands as it is. It will serve no useful purpose except to terrify creditors who have not troubled to read it carefully—and I say this because the arguments advanced in opinions received on the Bill show that the critics have not troubled to study its provisions. The argument that Government ought to be bound by any important decisions of the Select Committee will not stand. All we propose doing now is to go back to the wording originally in the Bill. We are going back to what was considered at leisure in preference to what was considered (if I may say so) hurriedly. It is done to make the Bill workable and to say that this is being done on flimsy grounds is simply to say that the hope of making the Bill workable is a flimsy hope. It is a remark which can only come from a member who is opposed to the Bill altogether. It is the duty of Government to propose changes, at any stage, which are necessary to make a Bill workable: and that, I think,

is the present position. In Select Committee the Hon'ble Member did accept this change of wording: but he accepted it as he accepted various other changes (and as Hon'ble Members and Ministers always accept changes in Select Committee) subject to examination and to approval by Government as a whole. I do not know if he definitely stated this in connection with this particular clause, but several times during the sitting of the Select Committee he repeated that all the changes made, when they were changes of substance, were thus subject to examination. Invariably we have to examine changes thus made and see if they are workable and if anything is unworkable, we are compelled to put forward amendments to make it workable. That is what has happened here. As to the argument that something contrary to the principles of the Bill is being accepted, the very contrary is the truth.

To argue that if the amendment is accepted by the House the clause will be useless and will add nothing to clause 20 is obviously extravagant. Clause 19(*1*)(*b*) is different from clause 20, and if clause 20 were sufficient by itself, clause 19(*1*)(*b*) would never have been inserted in the Bill and the Select Committee would not have been satisfied with a comparatively minor change in it.

I wish now to turn to the remarks made by Mr. Bose. He said that we propose absolutely to abolish the distinction, introduced by the Select Committee, between secured and unsecured debts. The answer to that is, we would abolish no such distinction. The distinction was in the Bill from the start and it will still be there if the amendment is carried. No one contemplates abolishing it. The wording of the Bill shows that this was so. The words in proviso (*i*) to this sub-clause were originally "a debt of the same description," and I have already asked the Hon'ble the President for leave to put in an amendment to restore those words as a consequential amendment when the amendment under debate is carried. In Select Committee, there was an objection raised that the words "of the same description" were too vague and that it would be difficult to decide in practice what debts were of the same description: but it is quite clear that a secured debt is not of the same description as an unsecured debt and that they would be treated differently. So the line of demarcation between secured and unsecured debts would not be done away with. No harm would be done by accepting the amendment under discussion. The original suggestion was that when a fair offer was put forward, a Board might cause it to be accepted, but there was a general doubt whether Boards could be trusted to do this without any reservation and so the provision about 40 per cent. agreement was put in. That is merely a secondary safeguard: the real safeguard is that the offer must be a fair offer. One means of showing that an offer is a fair offer is to show that creditors for 40 per cent. of the debt have agreed to it: but nothing cancels the provision that the offer must be a fair offer. This argument was recognised by Mr. Bose, when he gave

us an illustration of what might happen if the wording of the original Bill was restored. His main point was that unsecured creditors should not be allowed to combine and override secured creditors and that Boards should not have power to settle secured debts exactly as if they were unsecured. But why does he think this wrong? It is because it would be unjust—that is, it would not be fair. Mr. Bose sees that it would not be fair, but does he think that the Board, that the appellate officer, would not know it to be unfair? Is Mr. Bose the only man with the sense of fairness in the whole of Bengal? There are others who would see that protection was given to secured creditors, even if they are not mentioned as such in the Bill.

I shall now turn back to Mr. J. N. Basu's remarks. He asked the House to look to the analogy of a man who had actually bought property—that is, to proceed as if the mortgages had already fallen in. He apparently wishes to put the secured creditors in the same position as creditors who have already brought to sale, and purchased, the mortgaged property. If we accept his view, we ought to hand over the whole property of the debtor to the creditors and call it a compromise settlement. He further illustrated his meaning by quoting what happens under the Insolvency Act: I gather that he wants us to follow the Insolvency Act and thus enable the debtor "to start life again." He says that under the Insolvency Act 20, 30, 50 or 80 per cent. of the insolvents "start life again." He urges that we should arrange for our cultivators to start life again. As cultivators? No, as labourers! They are to be turned off their land (just like an insolvent who is turned out of his business) to start life again as labourers. Mr. Basu does not refer only to cultivators who would have to be declared insolvent: the clause deals with cultivators who, with fair treatment, could pay off their debts: all of these according to Mr. Basu should be treated alike as insolvents, even if it means their being turned out. That shows the absurdity of Mr. Basu's argument.

Before I sit down, I must refer to the suggestion that there has been some "understanding" with the mover of the amendment. On examination of the clause as it stands now, I found that it would be unworkable: in fact, those who support the change made by the Select Committee are those who do not want the Bill to work. For this reason I pressed the argument upon the Hon'ble Member that we ought to accept this amendment of Maulvi Abul Quasem. There was no arrangement whatever with Maulvi Abul Quasem. He did not even know that we were going to accept his amendment. He actually came round to me only 20 minutes ago and said that he did not want to waste the time of the House by moving his amendment if we were going to oppose it, and he asked if he should move it or not. I said: "Please move it." That was the first time he knew of Government's intention.

Maulvi Abul Quasem's motion being put, a division was taken with the following result:—

AYES.

Abmi, Nawabzada Khwaja Muhammad, Khan Bahadur.
Ahmad, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Hassan.
Bal, Babu Lalit Kumar.
Barma, Babu Prambari.
Bazir Uddin, Khan Sahib Maulvi Mohammed.
Bose, Mr. S.
Chakrabatty, Babu Ribar Chandra.
Chanda, Mr. Aparva Kumar.
Chaudhari, Khan Bahadur Maulvi Hafizur Rahman.
Chaudhuri, Maulvi Syed Osman Haider.
Chowdhury, Maulvi Abdul Ghani.
Das, Babu Guruprosad.
Donlop, Mr. R. W. S.
Farooqi, the Hon'ble Nawab K. G. M., of Ratanpur.
Fazlullah, Maulvi Mohammad.
Ferguson, Mr. R. H.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Graham, Mr. H.
Guthrie, Mr. F. C.
Haque, the Hon'ble Khan Bahadur M. Azizul.
Hagg, Mr. G. P.
Hamam, Mr. F. T.
Hooper, Mr. S. G.
Hoque, Kazi Emdadul.
Hossain, Maulvi Muhammad.
Kasem, Maulvi Abul.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Maulvi Abi Abdulla.
Khan, Khan Bahadur Maulvi Hashem Ali.
Khan, Maulvi Tamizuddin.
Leeson, Mr. G. W.
Martin, Mr. D. M.
Mitter, Mr. S. C.
Mitter, the Hon'ble Sir Brojendra Lal.
Momin, Khan Bahadur Muhammad Abdul.
Nazimuddin, the Hon'ble Khwaja Sir.
Norton, Mr. H. R.
Porter, Mr. A. E.
Qasem, Maulvi Abul.
Rahman, Khan Bahadur A. F. M. Abdur-
Ray, Babu Amulyadhan.
Ray, Babu Nagendra Narayan.
Ray Chowdhury, Mr. K. C.
Reid, the Hon'ble Mr. R. N.
Roxburgh, Mr. T. J. Y.
Ray, the Hon'ble Sir Bijoy Prasad Singh.
Sachse, Mr. P. A.
Shah, Maulvi Abdul Hamid.
Singha, Babu Kshetra Nath.
Steven, Mr. J. W. R.
Stevens, Mr. H. S. E.
Suhrawardy, Mr. H. S.
Taraldar, Maulvi Nujib Uddin.
Thompson, Mr. W. H.
Townsend, Mr. H. P. V.
Walker, Mr. J. R.
Woodhead, the Hon'ble Sir John.
Wordsworth, Mr. W. C.

NOES

Basu, Babu Jatindra Nath.
Bose, Mr. S. M.
Chandhuri, Dr. Jagendra Chandra.
Chaudhuri, Babu Kishori Mohan.
Ghose, Dr. Amulya Ratan.
Hossain, Nawab Musharrul, Khan Bahadur.
Maiti, Mr. R.
Mitra, Babu Sarat Chandra.
Mukhopadhaya, Rai Sahib Sarat Chandra.
Ray, Babu Khetter Mohan.
Roy, Choudhury, Babu Satish Chandra.
Rout, Babu Hosani.
Roy, Mr. Saileswar Singh.
Roy, Mr. Sarat Kumar.
Roy Choudhuri, Babu Nem Chandra.
Sahana, Rai Bahadur Satya Kinkar.
Sen, Rai Bahadur Akshay Kumar.
Sinha, Raja Bahadur Bhupendra Narayan, of Nashipur.

The Ayes being 60 and the Noes 18, the motion was carried.

Adjournment.

The Council then adjourned till 10-30 a.m. on Saturday, the 7th December, 1935, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Saturday, the 7th December, 1935, at 10-30 a.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHOWDHURY, of Santosh), in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers and 79 nominated and elected members.

GOVERNMENT BUSINESS

LEGISLATIVE BUSINESS

GOVERNMENT BILLS.

The Bengal Agricultural Debtors Bill, 1935.

(Discussion on the Bengal Agricultural Debtors Bill, 1935, was resumed.)

Mr. H. P. V. TOWNEND: May I, Sir, move the short-notice amendment to which I made a reference yesterday?

Mr. PRESIDENT: Yes.

Mr. H. P. V. TOWNEND: Sir, I beg to move that in the proviso to clause 19(7)(b)(i), lines 3 and 4, for the words "secured or unsecured debt, as the case may be," the words "a debt of the same description" be substituted.

Sir, when I was speaking yesterday, I informed the House that this amendment would be moved to-day in connection with amendment No. 345, if that amendment of Maulvi Abul Quasem was accepted by the House. The difficulty of providing in the Act that the terms of the offer should not be not less favourable than the terms of the amicable settlement relating to a "secured or unsecured debt, as the case may be" is the one that I mentioned yesterday. It would mean that an offer in regard to a secured debt must be just as favourable as an offer in regard to rent, and this would make the Bill unworkable.

Mr. S. M. BOSE: Sir, I beg to oppose this amendment for a good many reasons. This is a late attempt to give a go-by to the arrangement unanimously adopted by the Select Committee and accepted by Government without reservation. In spite of what Mr. Townend said yesterday, the Hon'ble Member——

Mr. H. P. V. TOWNEND: May I point out that in the Minute of Dissent there was a reservation?

Mr. PRESIDENT: To what stage are you referring, Mr. Bose?

Mr. S. M. BOSE: I am referring to the stage before the Minute of Dissent was sent.

Mr. PRESIDENT: Is it necessary for you to do that? The other day I ruled that whatever the Select Committee might have done, this House possesses the right to revise the decisions of the Select Committee, and in view of that, your argument is of no avail.

Mr. S. M. BOSE: I would not have referred to that had not Mr. Townend said that when it was accepted, it was done with a reservation. I am going to say that nothing of the kind was done. On the other hand, it was unreservedly accepted, and I will give the Hon'ble Member credit for honesty when I say he had no mental reservation. In the Minute of Dissent, Government reserved the right to move any amendments to the changes proposed in certain clauses after further consideration. But no such amendment was at all brought forward by Government. Not only that, when only a few days ago amendment No. 106 was moved by Government (I may be wrong but my impression is that amendment No. 106 was moved), to insert the following—

> "(12a) 'Secured debt' means a debt which is secured by a mortgage, charge or lien on the property of the debtor or any part thereof and includes any arrears of rent due to a landlord, and 'unsecured debt' means any other debt,"

this point was not raised. Even in the amendment of the Hon'ble Member No. 379 which will come up later on, this point about giving up the distinction between secured and unsecured debts has not been touched upon at all.

Mr. PRESIDENT: Has that amendment been moved at all?

Mr. S. M. BOSE: No, Sir, I am only referring to it to explain that Government not only gave no notice of amendments to reverse

the arrangement entered into (i.e., in introducing the clause as passed by the Select Committee; on the contrary, they adopted it and enforced it in amendment 106, already passed, and in amendment No. 379——

Mr. PRESIDENT: Mr. Bose, it would save quite a lot of time and be certainly more profitable, if your comments are now confined to the amendment now before the House. What you should do is to criticize its merits and demerits. It is no use referring to what had happened in the Select Committee.

Mr. S. M. BOSE: Mr. Townend referred to this matter, Sir, and that is why I have done so; otherwise, I would not have done that.

Then, Sir, coming to the amendment itself, the words "debts of the same description" were advisedly dropped in the Select Committee because they are meaningless and incapable of any legal definition. I have got the highest authority to say that the term "of the same description" is in law too vague or has no meaning at all. Sir, there may be different kinds of debts. May I give you some examples? There are various kinds of debts, first of all - joint debts and debts on which there is joint and several liability. There are debts due by principal and debts by the surety, original debt and debt for contribution; debts payable on demand and debts payable without demand, debts immediately payable and debts payable in future, *e.g.*, *hundi* at 30 days' sight; present debts and contingent debts, as for instance, on indemnity or guarantee which may or may not arise, debts based on a contract and based on torts, ordinary debts and judgment debts, etc. Sir, all these are various kinds of debts. But what is the meaning of the words "debt of the same description"? To what of the above classes does this apply? The phrase is, I submit, absolutely meaningless. We cannot attach any definite meaning to it. When we have the words "secured or unsecured debts," that is perfectly understandable, but when that goes, and the words "debts of the same description" are inserted, I say, it is absolutely meaningless, incapable of having any definite idea. Further, as a result of accepting the amendment, the Act, when passed, will become unworkable. We are told that the Boards will have some judicial representation on them, although there is no specific provision to that effect in the Act. There will be some judicial officers on the compulsory Boards at any rate, but how will they interpret this absolutely meaningless phrase "debts of the same description"? And in the vagueness of it, the distinction that exists between secured and unsecured debts will also be lost sight of. Sir, the Transfer of Property Act is an Act of the Central Legislature, and it has provided separate remedy for secured debts as opposed to unsecured debts. Can this Bill override that Act? I submit it cannot. I take it, Sir, that this is an attempt at blurring that distinction between secured and

unsecured debts so that all creditors, secured or unsecured, will practically be on the same footing. The result will be that unsecured creditors who are probably to get nothing will rule over the secured creditors. The former will come to certain terms with the debtors and if they can secure the support of the prescribed percentage, they will be able to thrust their terms down the throat of the secured creditors. On these grounds, Sir, I oppose this amendment.

The Hon'ble Khwaja Sir NAZIMUDDIN: I think it is incumbent upon me to explain the position as to why Government have changed their policy by accepting the amendment of Maulvi Abul Quasem. I have made it very clear beforehand that in cases where we have been advised that it will be impracticable and inadvisable to give effect to the provisions of the Bill, there Government have suggested amendments or have accepted amendments. In this particular instance, Sir, there was no question of compromise in the Select Committee. The particular suggestion was made and it was accepted, and this is always done on the distinct understanding that if it is found impracticable or inadvisable, Government will have the right to move amendments or to accept amendments. I cannot find any reason why Mr. S. M. Bose has been so particular on this point as to the attitude taken by Government. It will be impossible for Government to carry through any Bill if whatever is done in the Select Committee is considered sacrosanct and one that cannot be changed. Even after the Select Committee stage, various points are raised, and later on, on a closer examination, it is often found that some changes are necessary. Even when writing the note of dissent, we had to do that vaguely. We were not sure then, and we had not had time enough to examine the matter thoroughly——

Mr. S. M. BOSE: Did you put in an amendment?

The Hon'ble Khwaja Sir NAZIMUDDIN: No; it certainly did not occur to us then, but later on, as a result of the motion tabled by Maulvi Abul Quasem, the necessity for it was felt. Besides, there is one important point which I should like Mr. Bose to remember. This provision is based on the recommendation of the Board of Economic Enquiry Committee, and that Board consisted of eminent men, men with knowledge of Commerce, Trade, Industry and Finance. If I may cite a few names, there were Mr. Nalini Ranjan Sarker who has been the President of the All-India Federated Chambers of Commerce, and President of the Bengal National Chamber of Commerce, Mr. Khaitan, two Professors of the Universities, representatives of this Council and representatives of various other interests in Bengal. They made this

recommendation, and I do not see any reason why it should be considered so revolutionary, and that Government have done something extraordinary. They have merely gone back on the proposal they put forward beforehand.

As regards the merits of the question, they have been fully discussed, and I do not propose to enter into them any more.

The amendment was put and agreed to.

Mr. H. P. V. TOWNEND: Sir, I beg to move that the word "or" at the end of clause (*ii*) of the proviso to sub-clause (*1*)(*b*) of clause 19 be omitted.

Sir, this amendment is also related, if I may say so, to amendments 354 and 356. The position is this. The Select Committee made certain changes in sub-clause 19(*1*)(*c*). In particular, they have included in it the provision that the terms suggested for the acceptance of the creditor should be fair terms. When this was included, clause 19(*1*)(*c*) became practically the same as clause 19(*1*)(*b*). The real difference is only this, that under clause 19(*1*)(*c*) the original principal can be scaled down if 60 per cent. of the creditors have accepted an amicable settlement. This being so, it was suggested to Government that it would be a great improvement from the drafting point of view if clause 19(*1*)(*c*) were cut out and its substance put in clause 19(*1*)(*b*) in the manner provided in our amendment No. 354. There is another small difference to which I should have drawn attention, and that is, under clause 19(*1*)(*b*), the debtor has to make an offer, whereas under clause 19(*1*)(*c*) no reference is made to an offer. But if the House will consider how the thing will be done, they will realise that in every case there must be an offer by the debtor. It is quite impossible for an agreement to take place unless the debtor puts forward offers—then the creditors put forward other offers, and so the matter goes forward. It is no use keeping a separate sub-section merely to provide for the absence of any offer: it is essential that there should be an offer in every case. The intention, then, is that clause 19(*1*)(*c*) should be omitted, and that its substance, regarding reduction of original principal, should be inserted, as amendment No. 354 states, by adding at the end of clause 19(*1*)(*b*) the following:—

"unless creditors to whom there is owing not less than sixty per cent. of the total secured or unsecured debts, as the case may be, agree to the proposed reduction."

Sir, this is purely a drafting amendment, though it is rather complicated——

Mr. SARAT KUMAR ROY: Is Mr. Townend also moving amendment No. 354?

Mr. H. P. V. TOWNEND: If I may, Sir. I have already explained that amendments 354 and 356 are related to this.

Mr. PRESIDENT: Is it necessary for you to move these amendments at this stage? If you really wish to do so, I should like to examine if such a course would affect amendments Nos. 351 and 352?

Mr. H. P. V. TOWNEND: Amendments 351 and 352 are quite different.

Mr. PRESIDENT: Let me see; yes you are, perhaps, correct in saying that the decision on 354 will not govern amendments Nos. 351 and 352. But I shall examine the point further. In the meantime you may move your amendment.

Mr. H. P. V. TOWNEND: Sir, if I may, 356 also. We are incorporating the substance of amendment No. 356 in the clause which relates to amendment No. 354.

Mr. PRESIDENT: But amendment 356 is in respect of clause 19(*1*)(*c*). I do not feel inclined to take it up until all the three amendments with regard to (*b*) have been disposed of.

Mr. H. P. V. TOWNEND: That may come afterwards, Sir.

Sir, with your permission I should like to move the amendment No. 354 in a slightly modified form, namely, "Unless creditors to whom there is owing not less than sixty per cent. of the total debt——" instead of "sixty per cent. of the total secured or unsecured debts as the case may be."

Mr. PRESIDENT: Yes, I allow you to do so.

Mr. H. P. V. TOWNEND: Sir, I beg to move that, in clause (*ii*) of the proviso to clause 19(*1*)(*b*), last line, after the words and figures "of section 18," the following be inserted, namely:—

"unless creditors to whom there is owing not less than sixty per cent. of the total debt agree to the proposed reduction."

I beg also to move that clause 19(*1*)(*c*) be omitted.

Mr. SARAT KUMAR ROY: In that case he is proposing an amendment, and in my motion No. 362, I want to raise the 60 per cent. in amendment No. 354 to 75 per cent.

Mr. PRESIDENT: What is your amendment?

Mr. SARAT KUMAR ROY: Sir, my amendment is No. 362, and I am asking for your leave to move it now because if Mr. Townend's amendments are put, mine will become null and void.

Mr. PRESIDENT: I have no objection to your amendment being moved at this stage.

Mr. SARAT KUMAR ROY: Sir, I beg to move that in clause 19(*1*)(*c*), in line 1, for the word "sixty," the word "seventy-five" be substituted.

Sir, in support of my amendment to this amendment, I say, the object of the amendment proposed by the Hon'ble Member seems to be that if only sixty per cent. of the creditors agree to a reduction of debts below the amount of their principal, the Board may compel the non-agreeing creditors to accept such a reduction of their dues.

Sir, before enforcing any such compulsion on the non-agreeing creditors, the Board must be careful to see that debtors do not set up their friends as consenting creditors; and the only method of securing that object is to increase their importance. If you fix it as sixty per cent. I am afraid that would leave a very wide margin. So I propose that creditors to whom is owing not less than seventy-five per cent. of the total debts should consent to a reduction of the principal debt.

Therefore I move.

The Hon'ble Sir Khwaja Sir NAZIMUDDIN: Sir, I rise to oppose this amendment on the ground that the provision of 60 per cent. is qualified, and it is qualified by these words that in the opinion of the Board it must be a fair offer Therefore, any collusive agreement of 60 per cent. creditors will not debar the other 40 per cent. from raising objection that the offer that has been made by the debtor is not a fair offer. This is one protection against any collusive agreement. The second protection is in the right of appeal before the appellate Board, and there also it has got to be shewn that the offer that has been made by the debtor is a fair offer. So, I do not see how anybody is going to be prejudiced. The object of this clause is to reduce the debt, and the basis of reduction we have suggested is an agreement of 60 per cent. creditors to a certain reduction. If a fair offer has been made regarding the other 40 per cent., the debt can be scaled down. The object is simply to scale down the debt, and that is admitted. How is it to be done? Certain form of compulsion is necessary; and how are you going to enforce that compulsion? You have got to enforce compulsion with safeguard. Of course, this 60 per cent. has been taken arbitrarily, but in any case it is a reasonable proportion. After all, we have got to depend upon some percentage,

and we have taken 60 per cent., and the offer made has got to be a fair and reasonable offer. Then there is an appellate body. Even if the Board is perverse, if the Board is supposed to have been won over, the aggrieved man has a right of appeal to the appellate body. Therefore, I submit, Sir, there is ample safeguard from every point of view, and in view of that, I hope the hon'ble member will not press his motion.

Mr. S. M. BOSE: Sir, I am opposed to the amendments 354 and 356, because they affect the accepted principle that in no case shall the amount awarded be less than the original principal. That is proviso (*ii*), namely, "provided that for the purpose of this clause an offer shall not be considered by the Board to be a fair offer (*ii*) if it contemplates the reduction of any debt to an amount which is less than the original principal of the debt as determined under sub-section (*3*) of section 18." If this amendment is accepted, namely, that unless creditors to whom there is owing not less than sixty per cent. of the total secured or unsecured debts, as the case may be, agree to the proposed reduction—then this really gives the go-by to the principle that in no case should the debt be reduced to a level lower than the original principal. For that reason, I think the amendments should not be accepted.

Dr. NARESH CHANDRA SEN GUPTA: Sir, I am opposed to this amendment which proposes to raise the number to 75 per cent. At the same time I am afraid that the Government in proposing to take away the safeguard in sub-clause (*ii*) of clause (*b*) is heading towards a thing of which they do not seem to have any idea. The Hon'ble Member has told us that it is only when an offer made by a debtor is accepted by the Board as fair and reasonable, then only the proposals will be accepted and then there is an appellate officer to whom the matter will go. All this is very fine. At the same time we must remember that you are laying down something which is not law; you are replacing a definite rule of law which is intelligible to the sense of fairness of every individual Board and the appellate officer. That would bring chaos. You will find different Boards in different parts of the country working on entirely different principles. While creditors in one part of the country will get more than they deserve, creditors in another part will perhaps be borne down perhaps to ruin. It is the old story of the Chancellor's foot, with which the old common law lawyers of England twitted the equity of jurisprudence. If the equity which was administered by first rate lawyers of those days was open to criticism, does the Hon'ble Member seriously pretend that these Boards of villagers and these appellate officers who are not necessarily judicial officers can be trusted to follow any definite well-recognised principle and they will not be found to vary

the principle even in the same Board to suit the different cases? I submit, Sir, that while I am all in favour of a scaling down of debts, while I am all in favour of a proposal by which you can take away reasonably from the burden of the debts of the cultivators, I am certainly and most decidedly against an arbitrary procedure which gives different justice to different subjects. I would have understood and I would have probably supported the Government if it had taken courage in both hands and proposed a definite proportion as to the reduction of each debt owed by an agriculturist even if it was 50 per cent. That would be something intelligible and would apply equally to all the creditors, but what you have here is something about which you do not know how it will work. I am surprised that Government should have thought, at the last moment, of these proposals which were not considered by the Select Committee. In the Select Committee we proceeded on certain lines. Even there I had objections to make to the section, and I was proposing that instead of this we should have taken the very well-recognised procedure of arrangement laid down in the Insolvency law——.

Mr. PRESIDENT: Dr. Sen Gupta, you should not refer to the proceedings of the Select Committee.

Dr. NARESH CHANDRA SEN GUPTA: Sir, I am sorry that I forgot it. My own opinion is that this section (19) should have been deleted altogether and replaced by a provision corresponding to section 153 of the Indian Companies Act, by which if a majority in number representing a substantial majority of the creditors agreed to a particular proposal, that proposal, if accepted by the Board, might be building upon all That is the rule which has worked for over a century and worked extremely satisfactorily: it is worked even here and it is being worked in the High Court from day to day. Well, if you did that, you would have a definite well-recognised rule which would apply everywhere and you would have a definite majority whose opinion would be binding if it were fair and equitable. But here what you are providing is that not a very substantial majority will be in a position to impose its will upon the whole body of the creditors only if the Board considers it fair. You fail to distinguish between the different classes of creditors. There is the landlord whose rent has always been recognised to be the first charge on the land and who has kept it in arrear in the confidence that he can always recover it. There are the secured creditors who have the security of the land and who lent the money on the strength of that security knowing that they could recover it but always subject to the landlord's claim. They knew that the landlord could defeat them, but they took that risk and lent that money subject to that risk. Then there is the unsecured creditor who made a gamble knowing well that the landlord or the secured creditor could take away

his dues. By this simple provision in this section you sweep away all these distinctions—40 per cent. or 60 per cent. of the creditors might be all unsecured creditors whose transaction was a pure gamble and who at this day do not really expect to get back a penny of their money. This 40 per cent. will impose a rule and the Board if it is convinced that the proposal is fair they will accept it. Sir, you must remember that you are setting up Boards which will not be composed of expert members—it will consist of members to whom this sort of work is altogether new and who have no experience of settling disputes and no experience of what is fair and equitable in law. It is these Boards to whose individual judgment in individual cases you are giving free play. Sir, I am definitely against such a proposal. We must have a definite rule by which we should go and if the Government were prepared to accept it, I would have moved an amendment to the effect that instead of the reduction of debt to any amount which is less than the original principal, a limit should be prescribed as laid down in the Insolvency law relating to discharge where unless a debtor pays eight annas in the rupee, he is not ordinarily entitled to be discharged. I would leave to the Government the power to prescribe the minimum which will be considered fair subject to the discretion of the Board, but if you leave everything to the unfettered discretion of the Board you will bring about chaos. It may be that it would extinguish a great part of the debt which was legitimately due, but on the other hand it might leave a great quantity of debt which no conscientious person would consider to be fair and equitable. I am, therefore, against this chaos. If you reserve the power to Government to prescribe the minimum which should be considered fair and reasonable, by all means you may do it, but do not leave it to be settled by the conscience of each individual Board and individual appellate officer.

Maulvi TAMIZUDDIN KHAN: Sir, I am afraid that there must have been some understanding somewhere. I frankly admit that I have not been able to understand why Dr. Sen Gupta is so emphatically against the amendment moved by Mr. Townend. The purport of the amendment is that clause (*c*) should be deleted altogether and that the substance of that clause should be tacked on to sub-clause (*b*). That seems to be the sum and substance of the amendment. In sub-clause (*b*) it has been provided that the Board will be in a position to settle a certain debt if, at least 40 per cent. of the creditors come to an agreement with the debtor on certain terms. Then the remaining debts of the debtor may be settled either on terms which have been accepted by the 40 per cent. of the creditors or on terms which are considered to be fair by the Board. What are the terms that may be considered fair? One criterion of fairness will be that the original principal should in no case be reduced. This is provided in clause (*b*). But in clause (*c*) there is a clear provision that the original principal also may be reduced

if at least 60 per cent. of the creditors agree to a settlement to that effect. In such cases, the Boards are empowered to reduce certain debts even below the original principal. What this amendment purports to do is to incorporate that provision of (*c*) into clause (*b*). So, if there is no objection to (*c*), I do not see why there should be any objection to the proposed amendment of Mr. Townend. I submit, Sir, that I have no objection if the Government withdraws this amendment and sticks to the original clause as is to be found in the Bill because it is the same thing. In clause (*b*) (*ii*) it is no doubt stated that no offer should be considered fair if it proposes to reduce the original principal. But if you look to clause (*c*) you will find there that if 60 per cent. agree, then the Boards are empowered to settle the remaining debt on any terms they consider to be reasonable. There is no question of fair offer or anything like that in clause (*c*). Therefore what the Boards could do under clause (*c*), they are now proposed to be empowered to do under clause (*b*). Therefore there is no change in substance. But I have already stated that if the Government from a tactical point of view choose to stick to the clause as it stands in the Bill and withdraws this amendment, I have no objection. But if the Government sticks to this amendment, I have no objection to support it because it is in substance the same thing and there is no change whatsoever.

Sir, I have only one word to say regarding the motion of Mr. Sarat Kumar Roy. He says that in place of the words "60 per cent." the words "75 per cent." be substituted. A reply has already been given and I would only add that it will not at all be reasonable because it will be very difficult to get 75 per cent. of the creditors to come to a settlement. Sixty per cent. is a clear majority and if 60 per cent. came to an agreement on certain terms, there is no reason to suppose that those terms will be unreasonable or unfair. With these words I support the amendment of Mr. Townend.

Babu KHETTER MOHAN RAY: Before I move my amendment, with your permission, Sir, I propose to amend my amendment——.

Babu SHANTI SHEKHARESWAR RAY: Is the discussion on amendment 354 closed, Sir?

Mr. PRESIDENT: No. There are two amendments before the House. One is 350 and the other 355. It now strikes me that if I do not allow the intending movers of 351, 352 and 353 to move those amendments at this stage, and 350 is carried, they will have no chance of bringing forward their motions. I would certainly give them a chance at this stage, and have one discussion on all the motions.

Babu KHETTER MOHAN RAY: I wish to amend my motion in this way. I wish to delete the words "and consent," and insert the

word "not" after the word "shall" in the third line, and substitute the word "without" for the word "with" in that line. My motion will thus read:—

"Provided further that the settlement as a result of an offer made by the debtor of those debts not included in the amicable settlement shall *not* be made *without* notice *to* the creditors of those debts."

Mr. PRESIDENT: I allow you to do so.

Babu KHETTER MOHAN RAY: My object in moving this amendment is that nothing should be done behind the back of the creditor who will be affected by such an order. Whatever may be the result of the motion moved by Mr. Townend, in any case when the settlement will be enforced against those unwilling creditors they must have notice, they must be allowed time to press their objection against the notice. Therefore there is no provision for this, simply there is a notice served and the Board may pass an order that the settlement is to be arrived at after considering the offer made by the debtor to be fair and equitable, to enforce the offer against the unwilling creditor of the debtor. In these circumstances I propose that there should be a safeguard and the notice should be served upon the unwilling creditors who do not accept the offer made by the debtor.

I am also opposed to the amendments 354 and 355 moved by Mr. Townend. My reason is this. Maulvi Tamizuddin Khan says that there will be substantially no difference by deleting clause (*c*) and tacking it to clause (*b*). There will be no substantial change. I would like to draw the attention of the House that sub-clause (*2*) of the proviso to (*3*) is quite a different thing. Clause (*2*) contemplates reduction of any debt to an amount which is less than the original principal of the debt and by tacking it to (*c*) it has given the power to the Board over a creditor to whom is owing not less than sixty per cent. That is a tremendous power, a tremendous thing. Scaling down the original amount of a debt is not done anywhere else. Only by tacking it under clause (*b*) by a new amendment it is proposed to scale down the original amount of a debt with the consent of a creditor to whom is owing sixty per cent. of the debts. There may be fraud, there may be collusion. In insolvency proceedings and also in the proceedings taken under the Companies Act the standard number is 75; 75 per cent. of the creditors; and I think, 50 per cent. of the total real debt; and if more than 75 per cent. of the creditors to whom more than 75 per cent. of debt is owing, have joined in any agreement it can be enforced. But why in this particular case is the Government giving the go-by to this principle which has been operating here for a long time without disadvantage to any party. It is a salutary law, and we should not deviate from that percentage. With these words I move my amendment and oppose the amendment of Mr. Townend.

Mr. SHANTI SHEKHARESWAR RAY: I beg to oppose the amendment moved by Mr. Townend on behalf of Government. This amendment is of the usual order. It appears to me that the Government of Bengal in this case too are in a vacillating mood. They do not know their own mind; they have no clear idea as to what they are going to do, what benefit they intend to confer on the debtor. Sir, I may say that so far as I may be able to judge from this amendment, the attitude of the Government appears to be in short this, that they intend to create a maximum of inconvenience, a maximum of trouble in the country, with a minimum of responsibility on their shoulders in the matter of granting some relief to the indebted agriculturists of Bengal. Sir, having made a show of coming to the help of these unfortunate and helpless people, the net effect of their action will be to add misery all round.

Babu AMULYADHAN RAY: By this Bill?

Mr. SHANTI SHEKHARESWAR RAY: No, by this particular amendment. Sir, I would ask the Hon'ble Member in charge of the Bill to take a more bold stand, and instead of placing before the House such amendments, which will be of no help to the *raiyat* or to the debtor, to give them some substantial relief. As it is, Sir, there is absolutely no justification for an amendment of this nature. There has been no demand from any quarter for such an amendment. Sir, I heard Mr. Townend very carefully, and he did not state that he had brought forward this amendment in response to the wishes of any section of this House, or any section of the public. There should be some justification for an amendment of this nature, but when Government bring an amendment of this nature of their own accord, I naturally look upon it with suspicion. Sir, when the Government goes behind the decisions of the Select Committee that has been appointed by this House, and at the suggestion of the Government, there should be some strong reason for going outside their recommendations. If there is an agitation in the country against any recommendation of the Select Committee, in that case Government would be entitled to bring forward a new amendment. In the absence of any such——.

Mr. PRESIDENT: I am sorry, but I must observe that so far your remarks have been very general. I would like you to criticise the merits and demerits of the amendment before the House, if you can.

Mr. SHANTI SHEKHARESWAR RAY: In showing the merits and demerits of a particular amendment, I am naturally to examine the motives of the Government in the matter; it is not a very technical

point, and the remarks on the subject will naturally be of a very general character. The only point for consideration is whether there is any justification on the part of Government for bringing forward an amendment of this nature at this stage. I was pointing out that Government have made no case at all; they have not brought in this amendment in response to public demand or the demand of any influential or large section of this House. That would be some justification for an amendment of this nature. It appears to be merely an afterthought on the part of the Government of Bengal. Well, I was going to suggest that that afterthought is the result of loose thinking. In this particular clause we have to decide what is a fair offer. The whole thing hinges on the question of fair offer. I am afraid Maulvi Tamizuddin Khan was mistaken in thinking that because sub-sectipn (*c*) covers the question, there is nothing in (*c*) as regards a fair offer. In this particular sub-section we are dealing with what is to be a fair offer, and by accepting this amendment moved by the Government, we are practically accepting a certain thing as a fair offer which it was not the intention of the Select Committee to recommend as a fair offer. That is the broad principle involved so far as this clause is concerned. I think, Sir, we should stick to the original recommendation of the Select Committee, and not accept the amendment of the Government of Bengal in this matter which to my mind would create mischief.

Babu JATINDRA NATH BASU: I support the amendment that has been moved by Babu Khetter Mohan Ray. This amendment requires careful consideration. It may happen that a creditor will come before a Board and place before it an application signed by 40 per cent. of the creditors and ask that as that percentage had been agreed to, the Board had better sanction the settlement as proposed. That might give rise to great difficulties for those creditors who have not signed the settlement. They may not have notice of what is happening. So Babu Khetter Mohan Ray proposes that whenever there is any such proceeding before a Board, notice of it should go to the other creditors so that they may have their say, and then the Board may be in a position to decide the matter after hearing those creditors who are not in the settlement. The award should not be made behind their backs. It will be a great protection. The Bill as drafted makes no provision that notices should go out to those creditors, who are not in the settlement which may be presented to the Board. I think there should be in the Act itself a provision that whenever there is a settlement by a certain percentage of creditors, notice of such settlement should go out to all the creditors so that they may have their say, and they may not be injured. There should be a statutory provision to that effect; otherwise a certain percentage of creditors may go before a Board and place before it a settlement stating that that percentage of creditors had agreed and they may bind the other creditors who have

had no notice that the Board was going to consider this particular settlement. Whenever the Board passes or finally sanctions the settlement, the other creditors should have notice so that they may come and make their representation before the Board.

Maulvi ABUL QUASEM: I rise to support amendment moved by Mr. Townend. I should like to reply to some of the remarks of Dr. Sen Gupta, one of the greatest champions of this Bill. He seems to have no confidence in these Boards; he wants everything to be laid down by law and would leave nothing to the discretion of the Boards. The very basic principle of this Bill is voluntary settlement by a Board consisting of certain members who may be persons of the locality in whom the public may have confidence. They need not necessarily be lawyers. The laying down of their qualifications is proposed to be left to the rule-making power of Government. We have already accepted a particular clause—I refer to clause 2 (*10*) where the definition of the word "loan" has been taken bodily from the Usurious Loans Act and there also a great deal is left to the discretion of the Boards; it provides that any transaction may be declared to be a loan if the Boards think fit to do so. That is a great power given to the Board and the House has already agreed to it. Dr. Sen Gupta seems to suggest that, unless you lay down a definite rule of law, chaos will result. I respectfully differ from him. If these Boards cannot be trusted in the matter of judging the fairness or unfairness of an offer, then these Boards cannot be trusted at all in regard to any matter. You have got to place some confidence in these Boards. Now, if you cannot trust them to declare what particular offer is fair and what particular offer is not fair, then I believe, it is not worth while at all appointing these Boards. Dr. Sen Gupta made much of judicial officers and what is done by judicial officers in administering the law. Sir, there was a time when the saying passed current in England and was justified by facts that equity varied with the dimensions of the foot of a Chancellor. To-day, Sir, it is perfectly true to say that ordinary law is administered differently by different judges. Dr. Sen Gupta who is daily practising in the High Court knows full well that many lawyers feel consternation to have to appear before particular Judges in connection with particular cases. That is the experience of many lawyers practising in the High Court and also of others practising outside. No two Judges will give the same judgment on the same question of law and facts. If different decisions are given by different Judges on the same question of law and facts, I do not see any reason why we should not put up with such a state of affairs in connection with the conciliation Boards. In all human affairs there is bound to be difference of opinion. Dr. Sen Gupta seems to think that different Boards in different parts will give different opinions as regards the fairness or unfairness of an offer. That

was his point. Such difference in decision is happening daily in all law courts; it is nothing new and surprising; differences there are bound to be. That need not deter us from trusting the Boards. I think there is no real substance in the criticism of Dr. Sen Gupta. If you simply lay down a rule of law with a view to bringing about uniformity, you will take away a wise exercise of discretion on the part of the Boards in the varying circumstances of the different cases coming up before them. After all, we should always bear in mind that these Boards are being appointed at an abnormal time to meet an abnormal situation. It is said also that lawyers should be appointed to these Boards, but will not the lawyers in meeting out justice go according to their own interpretation of law? In human affairs we have to reckon with a certain amount of injustice as absolute justice cannot be had in this world of ours.

Dr. Sen Gupta has suggested that the rent of the *zemindars* would also be interfered with. I had never had any apprehension on this score. Clause 21A provides that sections 19, 20 and 21 will not apply so far as arrears of rent are concerned. Amendment No. 508 proposes that the principal of any debt due in respect of arrears of rent shall not be reduced under section 21. That is to say, the arrears of rent will not be interfered with; so the *zemindars* need have no apprehension of that. Amendment No. 354 as moved by Mr. Townend suggests that, unless creditors to whom there is owing not less than sixty per cent. of the total secured or unsecured debts, as the case may be, agree to the proposed reduction, the offer will not be considered a fair offer. This is a good safeguard. It is also provided that the offer must not be less favourable than the terms of the settlement in regard to a debt of similar description. There the distinction between secured and unsecured debts is provided for. That is another safeguard. That is to say, that as regards a secured debt if the offer is less favourable than one which has already been accepted with regard to a secured debt as an amicable settlement, it will not be given effect to. With all these safeguards, I do not see why so much objection should be taken to the amendment proposed by Government. If the proposed amendment is omitted, and the clause kept intact, we leave the substance out. The amendment proposes nothing new which we have not accepted.

Babu KHETTER MOHAN RAY: What about the interest?

Maulvi ABUL QUASEM: Where the interest is reduced I do feel that it is not necessary to include it in the offer unless both the parties are aware of a particular decision of the Board. I do not think that the Board is going to give any such decision. The creditors will also be in touch with the Board. They will know what is happening and they will have knowledge of the fact that 60 per cent. have already

agreed and on the lines of the settlement of the 60 per cent. the Board will give its decision. It cannot be presumed that these people will be altogether without notice as to what the Board has done and what the Board is going to do. Fresh notice, I think, is simply unnecessary One thing has just come to my mind: whatever be the decision of a Board, it is always subject to an appeal to the appellate authority and it is almost certain that that authority will be a judicial officer, although his qualifications are not laid down in this Bill. If a Board's award is considered unfair, it may be challenged as unfair before such an officer.

Mr. Shanti Shekhareswar Ray referred to Government being of a vacillating mind. My complaint against Government is that Government has been far too anxious to conciliate all possible adverse opinions against the Bill. That gives an impression that Government is in a vacillating mood. Had Government been firm from the beginning and not anxious to conciliate opposite opinion on almost every point, then Government's vacillation would not have been so apparent as it is. Government has been nervous about the influential opposition to the Bill and I regret that on many points Government yielded on which they should not have yielded. I do desire to place on record my protest against that With these words, I support the amendment that has been moved by Mr. Townend and oppose the amendment moved to the contrary.

Babu HEM CHANDRA ROY CHOUDHURI: Maulvi Abul Quasem does not find any distinction in substance between amendment No. 354 and clause 19 (*1*) (*c*) But both Maulvi Tamizuddin Khan and Maulvi Abul Quasem have said that really there is no difference and they could not understand why there should be objection to this amendment.

Mr. Shanti Shekhareswar Ray has also referred to that. In clause 19 (*1*) (*c*) it is provided that even if creditors owning sixty per cent. of the debt agree to a settlement, the Board has the discretion to accept it or refuse it: it is left solely to the discretion of the Board. If the Board finds that it is fair and reasonable, it will accept it; otherwise it will reject it. But there is no provision for the guidance of the Board in order to come to a decision whether an offer is fair or not. If this amendment is tacked on to clause 19 (*1*)(*b*), you will be laying down a rule for the Board to decide whether an offer will be fair or not. Sir, if it is tacked on, it will read thus—

"Provided that for the purpose of this clause an offer shall not be considered by the Board to be a fair offer if it contemplates the reduction of any debt to an amount which is less than the original principal of the debt as determined under sub-section (*3*) of section 18 unless the

creditors to whom is owing not less than sixty per cent. of the total secured and unsecured debts, as the case may be, agree to the proposed reduction."

It, therefore, follows that if the creditors, owning sixty per cent. of the total secured or unsecured debts, agree to the proposal, it will be considered to be fair. Of course, in a strict interpretation that may not follow; but the Board which will decide these questions will after all be village Boards. Therefore, as there will be no judicial officers presiding over these Boards, there is every likelihood that they will be guided by such an interpretation of the law. Sir, most of our opposition to the proposals in the Bill would have lost force if Government had accepted our amendment that these especially empowered Boards should have judicial officers presiding over them; but Government refused to accept our proposal and the way in which Government will render justice to the different classes of creditors—secured and unsecured—is reflected in their having accepted amendment No. 345 last evening. Sir, the apprehension that real justice is not going to be meted out by Government through their rule-making power has been confirmed by a talk I had with a responsible officer of Government yesterday. I understand that Government want to provide that first of all the secured and unsecured creditors shall get their principal out of the properties of the debtors, and thereafter, if anything is left over, it will go to satisfy the interest of secured creditors. Under the existing law, it is the secured creditors who have the preference, and they must have their reasonable claims satisfied first of all, and if anything is left over then it will go to satisfy the debts of a subsequent mortgagee or of unsecured creditors. If an unsecured creditor has acted foolishly in lending to any debtor who has not sufficient property or means to pay off his debts, then it is not for the secured creditor to pay the penalty for that! If that be so, it will be something like putting a premium on the foolishness of unsecured creditors to be paid at the cost of secured creditors. This will also result from the fact that these Boards are going to consist of members who have got no judicial experience or knowledge of law. Maulvi Abul Quasem says that when the Hon'ble the Judges of the High Court, District Judges and Munsifs differ in their opinion in passing their judgments or in giving an interpretation of the law, then what is the harm if these Boards differ in giving their judgments and awards. Does my friend therefore want that the High Court Judges should be replaced by Presidents of Union Boards or Courts, which will help great savings of the Government money. Maulvi Abul Quasem also loses sight of the fact that in civil courts there is a provision for first appeal, second appeal, and finally for an appeal to the Privy Council; but in this case only appeal lies to an officer who may or may not be a judicial officer, and then the principles of the Evidence Act, X of the Transfer of Property Act, and all the salutary provisions of the law have been proposed to be cast to the winds.

So, it is not fair to say that because Judges or Munsifs differ in their opinion, there will be no harm if these different Boards differ in their judgments on one and the same matter. With these words, Sir, I oppose the motion.

As regards the amendment moved by my friend Babu Khetter Mohan Ray, viz., No. 353, I think there cannot be any reasonable objection on the part of Government to give notice to those who will be bound by the award and who are not parties to the settlement.

Mr. F. A. SACHSE: Mr. President, Sir, may I say just a word or two about amendment No. 353 which has been referred to by the last speaker? The amendment is perfectly harmless in itself and also fair, but it seeks to provide for further notices to be given to the creditors; this is entirely unnecessary. You cannot read section 19 (*b*) and (*c*) without understanding that the whole idea of these sub-sections is that all the creditors and debtors would be present before the Board for purposes of settlement. It is only the debts of those creditors who are present before the Board that will be settled by the Board. Supposing a creditor refuses to make an offer at all or makes an entirely unreasonable offer. In sections 12 and 13 we have already got a duplicate procedure for summoning every creditor. Surely it is unnecessary to have a third provision for sending out notices to the same people. The discussion will take place in the presence of everybody concerned in the villages, where most of the creditors and debtors reside; and the agricultural debtors, with whom this Bill proposes to deal primarily, live in close contact with their creditors. So, we do not object to the proviso in principle: we simply say that it will unnecesarily encumber the Bill.

Then, Dr. Sen Gupta has said that Government in moving the proviso to section 19 (*c*) from that section to 19 (*b*) was introducing something which was not in the Select Committee's report. I think he is entirely wrong. It is simply a transfer of a particular provision from one section, viz., 19 (*c*), which Government wants to leave out altogether, and making it apply to the almost similar section 19(*b*). The result will be that there can be a reduction of debt with the agreement of 40 per cent. of the creditors down to the original principal. Below the original principal, the consent of 60 per cent. of the creditors will be required. Well, the only case I can conceive of any Board reducing a debt below the original principal is one like this. Supposing twenty years ago an agriculturist took a loan of Rs. 200 at a high rate of interest. During the last twenty years, before the present depression started, he may have already paid his creditor Rs. 1,000 as interest. The claim is still Rs. 600. In such circumstances is it not possible that even this

creditor will agree to say "my claim is wiped out if you pay down only Rs. 100 or Rs. 150 in cash"? Such cases, of course, will be extremely rare, and if the Boards—it is only the special Boards that will have this power—make an unfair reduction, it will always be open to appeal before the Appellate Officer.

Babu Hem Chandra Roy Choudhuri said that the opposition to all these amendments that we have been discussing this morning would have gone if Government had only agreed that there should be a judicial officer at the head of each Board as Chairman. From the discussion we have heard to-day it looks as if the members contemplate the creation of a good many Boards with these special powers. Dr. Sen Gupta definitely wishes that in each area not smaller than a subdivision, or possibly not smaller than a circle, there should be a Board with these special powers. Government have promised to appoint judicial officers as Chairmen of these Boards with special powers, so far as they possibly can.

Sir, there is just one word more that I want to say. I entirely disagree with those members of the House who say that the artificial and rigid distinction of debts into two classes—secured and unsecured—is better than the vague provision that we had in the Bill before the Select Committee amended it, that is to say, debts of the same description. There are far more than two classes of debts—secured and unsecured. If you say in the Bill that no offer shall be considered fair unless it relates to the same kind of description of debt, you will be giving much more scope to the members of the Board to consider all kinds of debt. It certainly was the intention of the Board of Economic Inquiry that in considering whether an offer was reasonable or not, the Boards would not only consider offers made by other creditors of the same debtor, but they would also consider the offers made by creditors of other debtors disposed of during the last week, last fortnight, or during the last month. In short, all the offers made by all the creditors before the Board should be considered in deciding what is a fair settlement. It is most unlikely that an ordinary agriculturist with a few acres of land will have more than one secured creditor and, say, 3 or 4 unsecured creditors. It will not be difficult for a Board to arrive at a fair settlement for any description of debt if it can act in this way. On the contrary, if you take only offers to one particular debtor, you will get no criterion at all. But what the House has been asking for is that there should be a criterion laid down in the law which will guide the Board in deciding what is a fair offer. For this purpose, in my opinion it is impossible to improve the provisos (*i*) and (*ii*) of clause 19 (*1*) (*b*).

The amendment that the word "or" at the end of clause (*ii*) of the proviso to sub-clause (*1*) (*b*) of clause 19 be omitted, was put and agreed to.

The amendment that in clause 19 (*1*) (*b*), the following proviso be added, namely—

"Provided further that the settlement as a result of an offer made by the debtor of those debts not included in the amicable settlement shall not be made without notice to the creditors of those debts" was put and lost.

The following amendment to Mr. Townend's amendment No. 355 was then put and lost.

"That in clause (*i*) of the proviso to clause 19 (*1*) (*b*), last line, after the words and figures 'of section 18,' the following be inserted, namely:—

'unless creditors to whom there is owing not less than seventy-five per cent. of the total debt, agree to the proposed reduction.' "

Then the following amendment of Mr. H. P. V. Townend was put, viz.—

That in clause (*ii*) of the proviso to clause 19 (*1*) (*b*), last line, after the words and figures "of section 18," the following be inserted, namely:—

"unless creditors to whom there is owing not less than sixty per cent. of the total debts, agree to the proposed reduction."

A division was taken with the following result:—

AYES.

Ahmed, Khan Bahadur Maulvi Emadeddin.
Ali, Maulvi Hassan.
Bal, Babu Lalit Kumar.
Barma, Babu Pramhari.
Basir Uddin, Khan Sahib Maulvi Muhammad.
Basu, Mr. S.
Chakrabarty, Babu Bihar Chandra.
Chanda, Mr. Aparna Kumar.
Chaudhuri, Khan Bahadur Maulvi Nazzar Subhan.
Chaudhuri, Maulvi Syed Osmon Haider.
Chowdhury, Maulvi Abdul Ghani.
Chowdhury, Haji Badi Ahmed.
Das, Babu Saruprasad.
Ezaufji, Maulvi Rar Rahman Khan.
Gilchrist, Mr. R. N.
Gladding, Mr. S.
Graham, Mr. H.
Guha, Mr. P. N.
Hakim, Maulvi Abdul.
Hogg, Mr. G. P.
Hooper, Mr. S. G.
Hoque, Kazi Emdadul.
Hussain, Maulvi Muhammad.
Hussain, Maulvi Latafat.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Maulvi Abi Abdulla.
Khan, Mr. Nazar Rahman.
Khan, Maulvi Tamizuddin.
Maguire, Mr. L. T.
Martin, Mr. C. M.
Mitter, Mr. S. C.
Mitter, the Hon'ble Sir Brojendra Lal.
Momin, Khan Bahadur Muhammad Abdul.
Nazimuddin, the Hon'ble Khwaja Sir.
Porter, Mr. A. E.
Qasem, Maulvi Abul.
Raheem, Mr. A.
Rahman, Khan Bahadur A. F. M. Abdur-.
Rahman, Maulvi Azizur.
Ray, Babu Amulyadhan.
Ray, Babu Nagendra Narayan.
Reid, the Hon'ble Mr. R. N.
Rexburgh, Mr. T. J. Y.
Roy, Mr. Saileswar Singh.
Sachse, Mr. F. A.
Samad, Maulvi Abdus.
Shah, Maulvi Abdul Hamid.
Singha, Babu Kshetra Nath.
Stevens, Mr. H. S. E.
Tarafdar, Maulvi Sajid Uddin.
Townend, Mr. H. P. V.
Woodhead, the Hon'ble Sir John.

NOES.

Banerji, Mr. P.	Ray, Babu Khetter Mohan.
Chaudhuri, Babu Kishori Mohan.	Ray, Mr. Shanti Shekhareswar.
Das, Rai Bahadur Satyendra Kumar.	Ray Chowdhury, Babu Satish Chandra.
Maiti, Mr. B.	Ray, Mr. Sarat Kumar.
Mukhopadhaya, Rai Sahib Sarat Chandra.	Ray Choudhuri, Babu Hem Chandra.
Nag, Babu Suk Lal.	Singh, Srijut Taj Bahadur.

The Ayes being 52 and the Noes 12, the motion was carried.

The following amendment of Mr. H. P. V. Townend was put and agreed to:—

That clause 19 (*1*) (*c*) be omitted.

Mr. H. P. V. TOWNEND: Sir, instead of this amendment I would ask your permission to move a short-notice amendment of which I handed you a copy this morning.

I beg to move that for the *Explanation* to clause 19, the following be substituted, namely:—

Explanation.—The words "total debt" mean the sum total of all debts which have been determined under section 18 or regarding the amount of which there is no doubt or dispute.

Sir, this is in effect a definition of the term total debt, and as you will remember, there is already a definition of this in clause 2. Clause 2 has been passed, and it is not possible to alter that definition by a subsequent amendment; but it is possible, if we pass this amendment here, to omit the definition of total debt from clause 2 by a consequential amendment at the end of the debate in the manner adopted in connection with other Bills. The definition given in the Explanation differs from the definition in clause 2 for the following reasons.

Dr. Sen Gupta in the course of the debate on an earlier amendment remarked that sometimes no debt is "determined" under section 18; if there is no doubt or dispute regarding the amount of the debt, then there is no determination under section 18. This formal objection is quite correct, as I have admitted previously in another speech. Therefore we seek to correct it by making this amendment here. It is really a drafting amendment.

Dr. NARESH CHANDRA SEN GUPTA: Sir, I support this amendment. But at the same time I wish to point out that there is another definition which has got to be rectified in this connection. That is that we have passed clause 2(*8*)(*iii*) which says that debt does not include "any rent not due at the time when a Board determines the amount of debts under section 18." I do not know what is to be done with regard to this.

Mr. H. P. V. TOWNEND: Sir, perhaps I did not make myself quite clear. What I intended to say was that we would ask the permission of the Hon'ble President after the whole discussion of this Bill was finished to move a consequential amendment omitting the definition of total debt which is contained in clause 2 and I understood that the Hon'ble President would be prepared to consider it.

Dr. NARESH CHANDRA SEN GUPTA: Sir, what I was pointing out is that it would no doubt remove one anomaly, but the definition of "debt" would remain nevertheless.

The amendment was then put and agreed to.

Babu HEM CHANDRA ROY CHOUDHURI: Before I move my amendment I would like to point out a mistake in it. In the last but one line the words "shall be" should be read as "shall not be." I beg to move that after clause 19 (*3*) the following be added, namely:—

"(*4*) Notwithstanding anything contained in sub-section (*1*), the amount of the principal of any debt due to any banking company registered under the Indian Companies Act, 1913, or any other law for the time being in force in British India relating to Companies shall not be reduced under clause (*b*) or (*c*) of sub-section (*1*) except by an amicable settlement."

Sir, the object of moving my amendment is that as it is the interest of Government to relieve the debtors of their debt, it is equally the interest of the Government to see that these companies are not forced to liquidation. Some of the companies have been established long long ago and have been investing their money on loans to the agriculturists, middle class people and landholders. The greater part of their working capital is deposit-money and these deposits have been made not only by the big men but also by some of the agriculturists, middle-class men and in some cases by the widows, who live upon the interest of those deposits. If these loans advanced by these companies be reduced to a figure which is less than the principal, I think the companies will be forced to shut their doors. Complaint is often made against these companies that they realise exorbitant interest. But so far as I know, the rate of interest charged by these companies in case of unsecured loans is not more than 24 per cent. and in the case of secured loans not more than 15 per cent. As I have already said, a greater part of the capital of these companies comes by way of deposits from all classes of people, so if these banks be forced to shut their doors, it is those people who have made deposits there will suffer and not the shareholders. Hence, there must be made some distinction between these companies and private money-lenders. Private money-lenders' money is their own money and they having got their interest so

long may easily relinquish a part of their principal. But in the case of companies they cannot do this, because whatever interest they have realised has been paid to the shareholders as dividend and earmarked as reserve which has also been invested in money-lending business. If they are now forced to get less than the principal then it is not the shareholders but the depositors who will be injured. I think that there will be a great setback to all joint-stock companies, whether industrial or agricultural, which for the interest of the province should be started now and then.

With these words I commend my motion to the acceptance of the House.

Dr. NARESH CHANDRA SEN GUPTA: I oppose this motion. There is no reason why the company money-lenders should be distinguished from the private money-lenders. Mr. Hem Chandra Roy Choudhuri's amendment has sought to make a distinction between a company money-lender and individual money-lender because of the fact that the Company gets its money from several persons and lends it out. I do not see why there should be a distinction in its favour. If the Company suffers, the person from whom the money is obtained would also suffer, that is to say, the person who lends the money to the Company. There are other points to be considered. The individual money-lender is very often a debtor himself; therefore, if there is any reason to make the case of the Company different on that score, then the individual money-lenders, who borrow money from others in order to lend, should also be distinguished, and if there is any case for such distinction, the case is much stronger in the case of the individual money-lender than in the case of the Company. The Company has got a procedure by which it can meet its creditors, and most of the loan offices I know of have availed themselves of the provisions of section 153 of the Indian Companies Act and got arrangements which provide for a *moratorium* over a long period of years, about 10 or 15 years. This *moratorium* has not gone down to the debtors. The individual money-lender cannot get any relief under this sort of *moratorium* except by going into insolvency. Therefore if the Companies suffer by this Act, they can approach their creditors and have an arrangement under section 153, and they will have their *moratorium*, but the individual money-lender who has borrowed from others in order to lend has not got that advantage. Therefore if any preference is to go to any one, it should be to the individual money-lender and not the Company.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: I beg to support the motion. In section 2 of this Bill some of the banks have been protected. These are the banks which are included in the second schedule to the Reserve Bank of India Act, 1935. Those banks that come under the category have been protected. Anybody borrowing from those banks will not

be able to get any relief under this Act. The question arises whether the banks under the management of the company should also get similar advantage. But Babu Hem Chandra Roy's amendment does not go far enough. He simply says that the principal amount that has been lent by a respectable bank should not be reduced. My friend Mr. Sen Gupta talks of *moratorium*. There is nothing in this amendment to think of *moratorium* or anything of the kind. Under section 153 of the Indian Companies Act he says that if these banks come to apply for a *moratorium* they can get it. Several of them have already got that *moratorium*, but the question is not a question of *moratorium*; that the money should not be paid within so many years, the question is how much money is to be considered protected under this Act when it is passed into law. Mr. Roy Choudhuri says: let the principal alone be not touched. Is that much, I ask? What are these bank institutions? These institutions have got their own debts and as far as we know practically all the banks of Bengal in mufassal, excepting just two or three, have closed their doors. It means that three or four crores of rupees that were saved have practically been wiped out from the bank finance. Why do you do them more harm by this Bill when you protect those banks that come under the Reserve Bank Act? Why do you protect co-operative societies or Central Banks if you cannot extend the very protection to the banks under the management of the companies? Here a very modest demand is being made from Government that they should consider this much that a bank's capital amount should not be in any way interfered with. These banks are banks under the Joint Stock Companies Act and the Government is somehow or other controlling all these banks; then why should you not protect these banks? If you say that these banks ought to go absolutely, then where will my friends go to get any relief if they want any accommodation? I appeal to the House not to disturb those banks that are under the management of the joint-stock companies and controlled by the Banks Act. I believe it will not do much harm to the Government if the motion of my friend Mr. Hem Chandra Roy Choudhuri is accepted. After all we are dealing with not only the debts of the agriculturists but we have to think of bigger question of finances as well. If the Government now wish to stop these joint stock companies' bank, let them say so. The cat will be out of the bag. We want from Government a statement that the Government does not consider it proper that protection should be given to those banks that are managed by the joint stock companies. If Government do not care for the finance and capital of the people they do not understand the first elementary principle of administration. They should not only look to the debtors' side but also see that the capital of the people is not at all wiped out. The people who have got some money in their hands deposited it in the bank in the hope that they would get their money back with a little interest. In many cases that deposit represents their savings. If you trifle with the savings

of others, I think it will be absolutely wrong for you to do so. If you want to give relief to the indebted people you ought also to see at the same time that the first rate banks from which all of us get help do not cease to exist or cease to have any help from Government. In the United States when their President found that the capital of the banks was going to be wiped out, he provided sufficient funds to meet their wants. But you are going on a different principle altogether, ignoring the first principle of administration. If you do so you will feel the consequences later on and lose the confidence of the people of other countries also. So I say, do not trifle with the savings of other people wrongly. I ask you, therefore, to accept the amendment moved by Babu Hem Chandra Roy Choudhuri.

Babu KHETTER MOHAN RAY: I rise to support the amendment moved by my friend Babu Hem Chandra Roy Choudhuri. Joint stock banks, as I have already said in my minute of dissent, should not have been included in the purview of this Bill. These banks are public concerns and are registered under the Companies Act and several crores of rupees have been invested in them by the public as deposits. These banks are financing trade and industry as well as agriculture and if these banks are brought within the purview of this Bill, then the result will be that many of them will collapse. Considering this state of things and also the fact that these banks are public institutions which are doing good service to the people of the country, there should have been some safeguards for them. In the original Bill Government had a mind to provide certain safeguards. It was provided in 2 (8) (*vii*) that any debt chargeable with interest at a rate not exceeding the prescribed rate which is due to any banking company registered under the Indian Companies Act, 1913, or any other law for the time being in force in British India relating to companies will not be included in this Bill. These banks were excluded to give a certain amount of protection to them. In the Select Committee this omission has been made and another class of banks has been included—I mean the banks included in the second schedule to the Reserve Bank of India Act. With respect to the scheduled banks I beg to submit that it is not possible for all the banks to be included in the category of scheduled banks. The reason is that in order to be scheduled banks they must possess a certain amount of capital and reserve fund and also they must deposit a certain amount of money with Government. If they can do that they become scheduled banks. So I say the consequence of this omission is that very few of the local banks will have any protection provided under clause 2 (8) (*vii*). For these reasons I support the amendment of Babu Hem Chandra Roy Choudhuri which says that whenever any debt is going to be settled due to the joint stock company that must be done amicably. These banks are managed

by directors and they are reasonable people, and as a large percentage of these debts are debts due to the banks, unless some protection is given to them, they will be very hard hit and many of them will collapse. Dr. Sen Gupta was saying that they should not be treated as special class of money-lenders, but then why should you give protection to the scheduled banks? These banks are bigger banks and will not be affected if they are excluded from the purview of this Act. Still you give protection to them because Government desires so. I do not see any reason why there should be this differential treatment. Many of these banks are dealing with traders and merchants and other people in this province and if these banks are excluded, those people will suffer greatly and some of them will probably come to grief.

The Hon'ble Khwaja Sir NAZIMUDDIN: The Nawab Sahib spoke very forcefully and eloquently for a considerable length of time without realising that the amendment was quite different from what he was trying to give the House to understand. He merely took one of the arguments of Babu Hem Chandra Roy Choudhuri as if that was the real amendment. Babu Hem Chandra Roy Choudhuri has suggested that these banks should be protected so that their principal may not be reduced and the Nawab Sahib insisted and pressed for that, but the amendment does not say so. The amendment says that there should be no reduction whatever unless there is the consent of these banks.

Babu HEM CHANDRA ROY CHOUDHURI: I do not think the Hon'ble Member is correct.

The Hon'ble Khwaja Sir NAZIMUDDIN: If it is the original principal it would be the principal in all cases, just the same, but it goes on accumulating and becomes large so that argument does not hold good. The real point here is this, that these banking companies are not in a position to realise their debts and the debts of the debtors will only be reduced where they are unable to pay. Instead of having a paper decree or a claim on paper for a debt, it is far better for the banks to have the amount reduced and receive payment. What will be the ultimate consequence if those debtors sell off their holdings. The result will be that the banks will have to buy themselves in most cases and instead of being banking companies they will be converted into *zemindars* which they do not like themselves. From the business point of view they want liquid cash and the best way to have liquid cash is by amicable settlement and in some cases reduction will be a great incentive for a debtor to make cash payment. Therefore Government must oppose this amendment.

Babu Hem Chandra Roy Choudhuri's amendment was then put and lost.

The question that clause 19, as amended, stand part of the Bill, was then put and agreed to.

Clause 19A.

Maulvi ABUL QUASEM: I beg to move that in clause 19A, after the word "matter" at the end, the following be added, namely:—

"and such decision shall not be questioned in any Civil Court."

Sir, I think this amendment is necessary. If any such question as to whether a particular person is a debtor or not is carried to a civil court the proceedings before the Board will be interminable. All decisions of the Board may be challenged before the appellate authority as provided in this Bill. That ought to be sufficient. I do not understand when far greater questions are being excluded from the jurisdiction of the civil court, why this question should be left open to be decided in a civil court. I think my amendment is necessary and should be accepted by Government and the House.

Mr. S. M. BOSE: Sir, I beg to oppose this amendment. This amendment is not at all required, because if you turn to clause 33, you will find the following provision, viz., that no appeal or application for revision shall lie against any decision or order of, or award by, a Board except as provided for in this Act. That makes it absolutely clear that no appeal can be entertained outside the four corners of this Act; so, I think the amendment is absolutely unnecessary.

The Hon'ble Khwaja Sir NAZIMUDDIN: I think, Sir, that what Mr. S. M. Bose has said is absolutely correct, and, therefore, this amendment is not necessary. I oppose it.

The amendment was put and lost.

The question that clause 19A stand part of the Bill was then put and agreed to.

Babu KHETTER MOHAN RAY: Sir, with your permission, may I slightly alter my amendment by omitting the brackets and letter "(c)" wherever it occurs, as also the word "and" in the first line?

Mr. PRESIDENT: Yes, you have my permission to do so.

New clause 19AA.

Babu KHETTER MOHAN RAY: Sir, I accordingly beg to move that after clause 19A the following new clause be inserted, namely:—

"19AA. Before proceeding under clause (*b*) of sub-section (*1*) of section 19 the Board shall record in writing that the agreement

referred to in those sub-sections is free from collusion or fraud. If in the opinion of the Board the agreement of creditors to whom not less than forty per cent. of the total debt is owing as in clause (*b*) of sub-section (*1*) of section 19, in respect of an amicable settlement with the debtor, is collusively entered into by the said creditors and the debtor with a view to defraud the other creditors, the Board shall not consider any offer made by a debtor under clause (*b*) of sub-section (*1*) of section 19 and shall not grant any certificate under section 20, but the Board shall proceed in respect of the remaining debts as if no offer had been made."

My object in moving this amendment is to point out to the Boards that they have got a great responsibility in coming to any decision in making awards, and that, first of all, they should see to it that the agreement arrived at is free from collusion or fraud and that they must also record in writing that there was no fraud or no collusion among the debtors or among some of the creditors. This is the first condition, and this should be done. The Board also shall not consider any offer made by a debtor and shall not grant any certificate under section 19(*2*), and that whenever it finds that collusive or fraudulent action has been committed by a debtor in connection with the debt settlement proceedings, the Board shall not grant any certificate whatever with regard to the settled debts as between debtors and creditors but to resort to the provisions under sections 19 and 22. But before doing so the Board must clearly find out that there was no collusion or fraud in the proceedings. With these remarks, Sir, I move my amendment for the acceptance of the House.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I think, in these cases discretion should be left to the Boards. There is clause 17, and we must rely on that clause to see that those people who take to fraud or fraudulent practices will be penalised. I, therefore, oppose the amendment.

The amendment was put and lost.

Mr. SARAT KUMAR ROY: As this is a very important subject and as there is only a very short time left before we adjourn, I suggest that we take up this matter the first thing Monday morning.

Mr. PRESIDENT: I would like you to take it up now.

Clause 20.

Mr. SARAT KUMAR ROY: I beg to move that clause 20 be omitted.

Briefly speaking, my reason for doing so is that the principle which underlies clause 20 is conflicting with that which underlies clause 19 (*1*) (*b*). As the House has accepted the latter, I think that it is not fair for us to accept this clause 20, as in that case, the Act would contain two conflicting principles.

Sir, in clause 19 (*1*) (*b*) the fundamental idea is that where both the Board and a large section of the creditors would agree and consider the offer made by the debtor to be fair, then and then only the Board shall have power to compel the remaining creditors to accept such offer. Here, Sir, one of the essential elements for enforcing compulsion on the creditors is the acceptance of the propriety of the debtor's offer at least by a large section of the creditors. Consequently, the Board is not there the sole authority to decide whether an offer made by the debtor is fair or not and whether compulsion should be enforced or not.

Sir, there is some equity to support such a method of enforcing compulsion on the creditors who do not agree to accept the offer of the debtor even though it is reasonable. But, Sir, if you provide in the next section of the Act that the Board shall have absolute discretion in enforcing compulsion irrespective of whether any section of the creditors has accepted such offer as fair or not, you practically nullify the wholesome provision you have inserted in clause 19 (*1*) (*b*) of the Bill. By inserting clause 20 in the Bill, you have practically given power to the Board to disregard the views of the whole body of creditors while by clause 19 (*1*) (*b*), you have enjoined on the Board to regard faithfully the wishes of at least a section of such creditors before enforcing compulsion. In other words, by enacting clause 20, you practically negative the effect of clause 19 (*1*) (*b*). I think that would be the inevitable result unless you materially amend clause 20 to such an extent that it shall be applicable only where there are not more than one creditor and such creditor does not accept the offer considered fair by the Board. Unless that is done, I think, to maintain consistency in principle, this clause 20 should be deleted entirely.

Mr. PRESIDENT: I would like to read out to the House an order which has just been received from His Excellency the Governor. It runs thus:—

"In partial modification of my order, dated the 28th November, 1935, I hereby direct that the Bengal Legislative Council shall meet at 11 a.m. on Monday, the 9th, and Tuesday, the 10th December, 1935.

(Sd.) JOHN ANDERSON,

Governor of Bengal."

Members are reminded that the first business on Monday will be financial business, followed by proposals dealing with the final stages of the Government Bills introduced on the 25th November, 1935, of which notice has already been given to hon'ble members. Thereafter, we shall resume the discussion of the Relief of Indebtedness Bill.

In my capacity as President I propose to adjourn the Council on these two days at 1 p.m. for one hour and fifteen minutes to enable members to have their lunch. This will also give the Muslim members of the House some rest which they badly need during the Ramazan. Anyway, we resume at 2-15 p.m. and carry on right up to 4-15 p.m. instead of 4-30 p.m. I propose to finally adjourn the Council fifteen minutes earlier for the convenience of the Muslim members. I think they have shown very commendable public spirit by cheerfully agreeing to sit much longer than what is usual during the Ramazan, to transact public business, in spite of the fact that they have to go without food during daytime.

Mr. S. M. BOSE: On this point, will it be permissible, Sir, to ask, if this arrangement will be extended beyond Tuesday, for it will be very inconvenient for us, Calcutta members, to attend the Council at 11 a.m. for a large number of days?

Mr. PRESIDENT: Well, it is His Excellency's prerogative to appoint such times for holding the meetings of this Council as he thinks fit. I have read out to you his order on the point. As regards the Calcutta members of the group to which you belong I consulted your leader, Mr. Jatindra Nath Basu, and he assured me, perhaps, on behalf of you all, that there would be no objection if we were to sit every day from 11 a.m provided that the lunch adjournment commenced not later than 1 p.m. and was longer than two hours. What you have said, perhaps, represents your individual opinion.

Mr. S. M. BOSE: Sir, I beg to support the amendment moved by Mr. Sarat Kumar Roy. In doing so, may I, first of all, say, that it is not the object of the Bill to provide for pure and simple naked compulsion. The Bill should be, so far as possible, based upon voluntary settlement, but to some extent a mild form of compulsion may be allowed, and I understand that it is not at all the object of either the Government of India or of the Government of Bengal to force absolutely naked compulsion on the creditors of Bengal. If that be so, clause 20 is opposed to that view. Clause 20 is compulsion, pure and simple, and undisguised. Sir, the Hon'ble Member is always fond of quoting the Central Provinces and the Punjab Acts. I suppose he is well aware that the Punjab Act is vastly different. In section 20 of the Punjab Act of 1934 it is provided that a certificate shall only be granted

by a Board when two conditions are fulfilled; first of all, that the offer made by the debtors is considered fair by the Board and that offer is accepted by over 40 per cent. or more in amount of the number of creditors. So, two things must be present: not only must the term offered by the Board be fair, but that term must have the approval of at least 40 per cent. of the total number of creditors in amount. These are the two conditions provided in the Punjab Act which the Hon'ble Member never refrains from hurling at our heads. But, Sir, why does he not follow that example here? Why is there only the first condition provided here, namely, "whatever terms are considered by the Board to be fair"? Then, whether these terms have the approval of a single creditor or not, here the creditors shall be compelled indirectly to agree to the debt scaled down by the Board. If that is the intention, I do not know why the framers of the Bill stopped short of making provisions for direct compulsion instead of only making it indirect as they have done——

Mr. PRESIDENT: Order, order. I shall now adjourn the Council.

Adjournment.

The Council was then adjourned till 11 a.m. on the 9th December, 1935, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Monday, the 9th December, 1935, at 11 a.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHOWDHURY, of Santosh) in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers and 94 nominated and elected members.

Oath or affirmation of allegiance.

Mr. W. W. K. Page made an oath of allegiance to the Crown.

GOVERNMENT BUSINESS

FINANCIAL BUSINESS

Public Accounts Committee Report for 1933-34.

The Hon'ble Sir JOHN WOODHEAD: Sir, I beg to present the Report of the Bengal Legislative Committee on Public Accounts for the year 1933-34.

Sir, I beg to move that in pursuance of the recommendation of the Bengal Legislative Committee of Public Accounts given in paragraph 4 of their Report, the Council do vote the excess grant mentioned below representing expenditure incurred in excess of the grant voted for the year 1933-34—

Grant No. 27—Superannuation allowances and pensions Rs. 17,279

The motion was put and agreed to.

The Hon'ble Sir JOHN WOODHEAD: Sir, on the recommendation of His Excellency the Governor, I beg to move that a sum of Rs. 6,000 be granted under the head "9A—Scheduled taxes" during the current financial year.

The motion was put and agreed to.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, on the recommendation of His Excellency the Governor, I beg to move that a sum of

Rs. 2,00,000 be granted for expenditure under the head "55—Construction of Irrigation, Navigation, Embankment and Drainage Works, not charged to Revenue."

Sir, members of this House have already received the Memorandum which explains the reasons why this expenditure has had to be incurred. I find, however, Khan Bahadur Abdul Momin signifying dissent that he has not received it. It is quite likely, and I may read it out for his benefit. It runs as follows:—

Sir, it is most unfortunate that we have to incur this expenditure, but it may interest the House to know that in the Punjab, where conditions are practically similar to those prevailing in Bengal, there is a weir of about the same length as the Damodar Weir, called the Marala Weir, and it cost about five times what our weir cost in Bengal, and moreover they had to spend on the top of that about Rs. 35 lakhs for repairs to it. Besides, there are three Punjab weirs which failed or partially failed in the course of the last seven years, and have had to be repaired or reconditioned at a cost of Rs. 37 lakhs. It will be apparent, therefore, that it is impossible to guarantee the construction of a weir which will be safe against any damages through floods. The damages in our case might have been very serious, but luckily they were not so, and our cost of repairs will be about Rs 9 lakhs. The expenditure is urgent and immediate, because these repairs must be undertaken and finished before the next rains. Therefore, Government have come up for a supplementary grant of Rs. 2 lakhs, the balance we are meeting by reappropriation. The total expenditure during the current financial year will be about Rs. 4 lakhs.

Babu JATINDRA NATH BASU: There is one information which is wanting in the Memorandum, and that is whether the water dues will be charged so long as the weir is not working.

The Hon'ble Khwaja Sir NAZIMUDDIN: The weir is working, but the floor and other things have been damaged, and they are going to be repaired. During the period when water was wanted in September, October and part of November last, we supplied water to the area to be irrigated, when it was required.

Mr. P. BANERJI: Sir, I want to oppose this motion, firstly for the reason, which has been repeated times without number, that this department has all along been extravagant, and secondly, for the reason that the failure was due to lack of proper supervision, and, thirdly, for the reason that an expert had to be brought from the Punjab for investigation into it. I cannot understand why an expert had to be brought from the Punjab, when we all know that our Chief Engineer, Mr. Curry, was for a long time in the Punjab. We do not know how the

department is being worked, but we know that Mr. Curry was all along in the Punjab, and that only three or four years ago, he was transferred to Bengal as our Chief Engineer. That being so, his experience of the Punjab irrigation ought to have been sufficient in the matter, and I do not know why another man was brought from there. We do not know also what additional expenditure was involved in bringing him from the Punjab to Bengal. Then, Sir, we have been told that there was no stoppage of supply of water, and that being the case, I think Government should have gone into the matter more fully to see whether the small damage could not be repaired at a less cost. For these reasons, Sir, I oppose the motion.

Rai Bahadur SATYA KINKAR SAHANA: Sir, I support the motion of the Hon'ble Member for the simple reason that the Damodar Canal has been doing immense good to the agriculturists of that part of the country. The abnormal flood of September last has damaged the mouth of the canal to some extent, and unless we are out to oppose Government for the sake of opposition only, we should, every one of us, support this motion.

Mr. S. M. BOSE: Sir, I beg to support the motion, but while I do so, may I ask for some information? The amount asked for is Rs. 2 lakhs, and the total expenditure is Rs. 9,27,000. I want to know how much of this will be credited to "maintenance and repairs" and how much to the capital amount. If I remember aright, there is a provision in the Act that the charges for water will cease after the interest on the capital amount, etc., have been paid off, and that is the reason why I am asking this question.

Mr. SHANTI SHEKHARESWAR RAY: The reason why I want to oppose this demand is that the Hon'ble Member has not stated as to whether there has been any enquiry into the matter or not, as to whether this damage was preventible or not, and as to whether it was due to any negligence on the part of the authorities concerned. The Hon'ble Member has taken shelter on the safe ground that it was the work of God——

Mr. PRESIDENT: But are you justified in saying that?

Mr. SHANTI SHEKHARESWAR RAY: I am not making any definite statement before the House because I am not familiar——

Mr. PRESIDENT: The reasons are stated in the Memorandum, and instead of making general observations you should confine your arguments to the Memorandum.

Mr. SHANTI SHEKHARESWAR RAY: Sir, for members of this Council, it is very difficult to be very definite in such matters, but what I want to know is that Government should disclose whether there was any departmental enquiry——

Mr. PRESIDENT: Does not the Memorandum disclose that departmental enquiry was made?

The Hon'ble Khwaja Sir NAZIMUDDIN: Yes, Sir, it is mentioned therein that on the advice of the acting Chief Engineer——

Mr. SHANTI SHEKHARESWAR RAY: But I have not been supplied with a copy of the Memorandum——

Mr. S. M. BOSE: But it has been sent to us, and we have all seen it.

Mr. SHANTI SHEKHARESWAR RAY: Whatever that might be, I would ask for further details in the matter. It is no use asking the House to sanction a grant unless you are prepared to take the House into your confidence fully. What I suggest is that before Government comes forward for such a grant, it should appoint a Committee to investigate into the question as to whether the damage was due to natural wear and tear or to the negligence on the part of the officials concerned. That is an important point which I want to emphasize. Mr. P. Banerji has stated than an officer was brought from the Punjab for the purpose, but I suggest that the matter should be further examined by a Committee. As a layman I am not suggesting that in the meantime the work should be stopped; if experts of the department suggest that the necessary repairs should be taken up immediately, I think we must accept that position, but we should not stop there. On the other hand, we must have the matter thoroughly examined so as to prevent a recurrence of such things in the future.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, Mr. P. Banerji has raised the point as to why an expert was brought from the Punjab. The obvious reply is that, while Bengal has got only one weir, that is the Anderson Weir, which was constructed recently, the Punjab has got a number of them, and Government there have got officers with expert knowledge and experience in the construction of these weirs spread over 25 to 30 years—as to how they are constructed, and how

they are affected by floods. Naturally, therefore, we want their advice, and it may interest Mr. P. Banerji to know that Mr. Curry was not in India at that time. He was on leave, and Rai Bahadur S. N. Banarji was acting as Chief Engineer, and it was on his advice that we approved of the idea of an expert being brought from the Punjab. Mr. Cox who came from there made a close inspection and submitted his proposal which was again vetted by three Chief Engineers of the Punjab sitting as a Board. They approved the report and the recommendation of Mr. Cox. This was then submitted to Government with the ultimate recommendation of our then Chief Engineer. Therefore, I fail to see how members can suggest that Government did not go fully into the matter. If we accept Mr. Shanti Shekhareswar Ray's suggestion for further investigation, I think the well-known saying will apply, viz., "while Rome burns, Nero fiddles". Sir, the matter is urgent and immediate, and unless the repairs are made before the beginning of the next rains, there is every likelihood of very serious damage being done by flood which will mean a waste of another Rs. 30 or 50 lakhs. It will also mean that the surrounding area will not get water for irrigating their lands which will again mean loss to Government and to the people of the locality. Therefore, Sir, in view of what I have stated, and in view of the fact that, according to Mr. Cox's report, there was no defect in the materials used in the headworks, that the arrangements were satisfactory, that workmanship was excellent, and that the cost was remarkably small—what surprised Mr. Cox was the marked difference between our expenditure and that incurred in the Punjab, and this is what he specially mentioned to every member of Government whom he saw including His Excellency the Governor, namely, that whereas for a similar weir of the same condition, the Punjab has spent three times our capital cost—I cannot find any ground on which any objection can be raised to our present demand. Sir, we have built this weir at a remarkably cheap rate, and as far as the damages are concerned, it must be remembered that it was caused by a very abnormal flood as severe as, if not severer than, the 1913 flood and on that ground, I do not think the damages, comparatively speaking, are so great. At the same time, however, it was of such a serious nature that if it is not repaired before the beginning of the next rains, there is every chance of much greater damage if another flood comes along.

In view of what I have stated, Sir, I hope the House will accept my motion.

Mr. PRESIDENT: But I should like to remind you of the question raised by Mr. S. M. Bose.

The Hon'ble Khwaja Sir NAZIMUDDIN: I am sorry I did not remember that, Sir. The total cost on account of maintenance and

repairs will be Rs. 1,56,000 for 1935-36 and 1936-37. Of course, I do not agree with the interpretation given to the Act by Mr. S. M. Bose, but that is a matter we need not go into.

The motion was put and agreed to.

GOVERNMENT BUSINESS

LEGISLATIVE BUSINESS

GOVERNMENT BILLS.

The Bengal Wakf (Amendment) Bill, 1935.

The Hon'ble Khan Bahadur M. AZIZUL HAQUE: Sir, I beg to move that the Bengal Wakf (Amendment) Bill, 1935, be taken into consideration.

The motion was put and agreed to.

The question that clause 1 stand part of the Bill was put and agreed to.

Clause 2.

Maulvi ABUL QUASEM: Sir, I beg to move that for clause 2 the following clause be substituted, namely:—

"2. In sub-section (*1*) of section 27 of the Bengal Wakf Act, 1934 (hereinafter referred to as the said Act)—

(*i*) in clause (*a*) after the word 'investigating' the words 'and determining' shall be inserted; and

(*ii*) after sub-clause (*a*) the following shall be inserted, namely:—

'(*aa*) deciding, subject to any order or decree of a competent court, any question whether a particular property is wakf property or not.' "

Sir, the way in which Government has put forward an amendment to this Act is, I feel, not quite proper. In this connection, I should like to refer to section 27 of the Act, as in my humble opinion, the substance of the Government amendment should find a place in that section, and not in section 43, as proposed in this Bill. There the

five different functions of the Commissioner are given, and I think this particular and new function which is going to be included, should appropriately go into that section, and that is why I propose my amendment in place of the Government amendment, to section 27. Sir, the Government amendment can be divided into two parts. The first part concerns whether a particular property is wakf property or not, and the second part relates to whether a wakf is wakf-al-al-aulad or not. These are the two questions to decide which power is proposed to be given to the Commissioner, subject to modification or revocation by a competent court. So far as my amendment goes, I propose to put that part of Government's amendment which relates to a decision of the question whether a property is wakf property or not under section 27 by a separate sub-clause. So far as the other part is concerned in my opinion Government's amendment is not necessary or called for because section 27 (*1*) (*a*) says—

"The functions of the Commissioner shall include—

(*a*) investigating the nature and extent of wakfs and wakf property, and calling from time to time for accounts, returns and information from mutwallis."

I feel, Sir, that here the Commissioner has been given the power to investigate the nature of a wakf property and I think the question whether a wakf property is wakf-al-al-aulad or not, comes within the purview of this clause. For that no separate provision is necessary. The nature of a wakf means whether it is wakf-al-al-aulad or a public wakf. I think the word "nature" covers the nature of the wakf, such as the Government amendment indicates.

The question has another aspect We know a wakf-al-al-aulad has been defined in this Act, and the Commissioner will presumably be an officer who may be depended upon by reason of his knowledge and experience to decide satisfactorily whether a particular wakf is wakf-al-al-aulad or not, and no appeal from his decision need be provided for. Already in section 92 of the Act it has been provided that "No suit shall be brought in any Civil or Revenue Court to set aside or modify any order made under this Act". I think the Commissioner has already been given the power to investigate the nature of the wakf, and any order made as the result of that investigation, according to my reading of the present law, is not subject to a decision of any Civil Court. Government now proposes that such a decision shall be made subject to alteration by a Civil Court. I think that is going back on the principle which the House has already accepted by passing the Bengal Wakf Act of 1934. I think it is a retrograde proposal made by the Government.

May I repeat once again, subject to your permission, Sir, that the word "wakf-al-al-aulad" has been defined. It is a simple question to decide whether a wakf is a public or private wakf. A wakf-al-al-aulad means a wakf under which not less than seventy-five per cent.

of the net available income is for the time being payable to the wakif for himself or any member of his family or descendants. According to this definition it will be quite easy to find out from the provisions of the wakf deed whether a particular wakf answers the definition or not. If there is any appeal the matter will be unnecessarily prolonged. To provide an appeal from his decision in this respect is unnecessary. That, Sir, explains why I have suggested that after the word "investigating" in section 27 sub-clause (*1*) the words "and determining" should be inserted. Only the word "investigating" has been used. The addition of the words "and determining" will make the position quite clear; it will mean that not only an investigation is intended but also coming to a decision as to the nature of the property. That will remove any difficulty which may arise.

Then as regards the other part of my amendment, as to whether a particular property is wakf property or not; that is a question from the decision of which an appeal should be properly provided for, because a third party and even a mutwalli in his private capacity may be interested. I agree that in fairness a decision on a point such as this should be made subject to any order or decree of a competent court. That is why I have suggested in the second part of my amendment, "deciding, subject to any order or decree of a competent court, any question whether a particular property is wakf property or not".

May I also draw attention to section 44 sub-section (*4*) of the Act where it is provided that—

"Every such application shall be accompanied by a copy of the wakf deed or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particular, as far as they are known to the applicant, of the origin, *nature* and objects of the wakf".

I stress the word "nature". Here also the same word is used. When the Commissioner will be called upon to determine the nature of the wakf, that is whether it is public or private wakf, the decision should be final and should not be thrown into the melting pot again in the Civil Court.

I commend my motion to the acceptance of the House.

The Hon'ble Khan Bahadur M. AZIZUL HAQUE: I find, in substance, that there is practically no difference between the suggestion of Maulvi Abul Quasem and Government, except on the question of appeal. I find that he himself says that any order which may be made by the Commissioner shall be subject to any order or decree of a competent Court to decide any question whether a particular property is wakf property or not. He also intends that at some stage or other a decision shall be subject to an order or decree of a Civil Court. The

position, if his amendment is accepted, is this. That section 92 will be operative and by that it may be argued that no suit shall be brought to set aside an order made by the Commissioner. On the other hand, by the operation of section 27 the Commissioner will decide whether the property is wakf or not. What will be the result? My friend thinks it is very simple, but a man who has left a property worth 5 lakhs, or 2 lakhs or Rs. 50,000; he has got a grievance, namely, that the decision of the Commissioner is not correct. We have not set up this sort of executive decision on evidence checked by the Commissioner. If a man has a grievance, some remedy should be given. If my friend's amendment is accepted, no remedy is left to him unless he has already got a decision by a Civil Court. So far as Government's amendment is concerned, our position is this, that we do not take up the functions of the Commissioner as my friend thinks. We take a different view, nothing more than that. It is really a part of the action of a Commissioner during the life of the enrolment. A man says a property is not a wakf; there is nothing under this Act by which the Commissioner can decide whether it is a wakf or not, but if the Commissioner decides, it is open to that man to go to the Civil Court. For the time being, whatever the decision of the Commissioner is will stand here. If there is any legitimate grievance by a citizen, he can appeal.

Then the third thing is this. Namely, that my friend forgets that his argument was on the decision as to the nature of the wakf, whether a wakf-al-al-aulad or not. I found myself while practising in the Law Courts, I know to what extent the word "nature" can be interpreted by lawyers, and it may be that the time might come when fruitless litigation may be entered on the ground that it is not a question of the nature. This is not a matter which we can leave to the interpretation of the word "nature" but leave it subject to the decision——

Maulvi ABUL QUASEM: What about the interpretation?

The Hon'ble Khan Bahadur M. AZIZUL HAQUE: English is not my mother tongue. I do not claim to give the interpretation, but we lawyers dabble with words in such a way that it might have a different meaning altogether. My friend may have a brief on the other side, and may be able to argue on this very word for two days together. I think we ought to take this word out from the purview of the interpretation and make it permanent in the Act. It is better always that the statute should be specific and any provision stated in the statute should be beyond any controversy or equivocal decision by anybody.

Then I may say this much, that so far as this amendment is concerned, if the mover is prepared to divide it into two parts, I am pre-

pared to accept the first part, namely, in section 27 where he says the functions of the Commissioner shall include investigating and determining the nature and extent. By that, Sir, I mean that this, subject to the provision of this Act, will bring in the question whether it is wakf property or not, or something else of this nature which the Commissioner will decide. I leave in that part. If my friend will separate it into two parts, I will accept tke first part.

Maulvi ABUL QUASEM: I have no objection. My motion will read thus—

"In sub-section (*1*) of section 27 of the Bengal Wakf Act, 1934 (hereinafter referred to as the said Act)—

(1) in clause (*a*) after the word 'investigating' the words 'and determining' shall be inserted."

The amendment was put and carried.

The second part of the amendment was, by leave of the Council, withdrawn.

Maulvi TAMIZUDDIN KHAN: I beg to move that in clause 2, line 1, for the figures "43," the figures "46" be substituted and for the figures and letter "43A," the figures and letter "46A" be substituted.

This is more or less a drafting amendment

The Hon'ble Khan Bahadur M. AZIZUL HAQUE: I beg to accept this.

The amendment was put and agreed to.

Maulvi TAMIZUDDIN KHAN: I beg to move that the following proviso be added at the end of proposed section 46A (formerly numbered as 43A), namely:—

"Provided that any decision as to whether a particular property is wakf or whether a wakf is wakf-al-al-aulad or not, made by an officer appointed by the Local Government under sub-section (*1*) of section 2 of this Act to perform the duties imposed and exercise the powers conferred by Chapter IV on the Commissioner and the Board before or after the commencement of this Act shall be deemed to be a decision of the Commissioner within the meaning of this section unless such decision is revoked or modified by a competent Court."

It would appear that there was a lacuna in the Wakf Act——

The Hon'ble Khan Bahadur M. AZIZUL HAQUE: To shorten matters I am prepared to accept the amendment if my friend will agree to certain verbal alterations. The substance will remain the same but I want to expunge some redundant words. With your permission, Sir, may I read it?

Mr. PRESIDENT: Yes.

The Hon'ble Khan Bahadur M. AZIZUL HAQUE: Sir, I beg to move that the following be added at the end of proposed section 46A (formerly numbered as 43A), namely:—

"and any decision of any such question made before or after the commencement of the Bengal Wakf (Amendment) Act, 1935, by a person appointed by the Local Government under sub-section (*1*) of section 2 of this Act shall be deemed to have been made by the Commissioner under this section."

Maulvi TAMIZUDDIN KHAN: I accept the amendment in this modified form. It would appear, as I was going to say at the outset, that there was a lacuna in the Bengal Wakf Act, 1934. It was not provided there who was to decide as to whether a particular property should be wakf property or whether a wakf in question should be considered as a wakf-al-al-aulad or not. In the working of the Act decisions on points like this will be necessary almost every day. Therefore, Government proposes that questions of that nature should be decided by the Commissioner, but I think a further amendment is necessary because the Commissioner of Wakfs has not yet been appointed and before his appointment a special officer has been appointed to perform certain preliminary functions and in performance of these preliminary functions decisions have to be taken as to whether an alleged wakf is a real wakf or whether a wakf is wakf-al-al-aulad. If the special officer is not empowered to decide such questions various difficulties are likely to arise in the working of the Act. Therefore, my amendment says that the special officer also should have the same power as those of the Commissioner in deciding such questions and his decision will be subject to the decision of a Civil Court just like the decision of the Commissioner.

Maulvi ABUL QUASEM: I look upon this particular amendment with some misgiving. We were given to understand when this Bill passed through the legislature that before the Wakf Fund was a reality Government would advance money to enable the Wakf Commissioner to be appointed and the Board of Wakfs to be constituted, which would be paid off from the Wakf Fund afterwards. We do not know when Government is going to constitute a Wakf Board and appoint the Commissioner. In the meantime we find the Hon'ble Minister is accepting the amendment of Maulvi Tamizuddin Khan. It seems to me

that Government is going to sit over the appointment of the Commissioner after giving this proposed power to the special officer who has been temporarily appointed to perform only certain functions under Chapter IV of the Act which has been brought into force so far. The Moslem community in Bengal cannot brook a day's delay in creating the machinery provided in this Act so that waste, misappropriation, and alienation of wakf property may be stopped immediately. I do not know whether the Hon'ble Sir John Woodhead's department has come down upon the proposals of the Hon'ble Minister in charge of the Education Department. I do not know what is standing in the way of the appointment of the Commissioner forthwith and giving him a regular establishment and also of constituting the Wakf Board. I fear that the appointment of the Board and the Commissioner may be unduly delayed if the present officer who is performing only certain preliminary functions is allowed to continue and decide questions such as those proposed in the amendment. I want a definite statement from Government as to whether they want to delay the constitution of the Board and the appointment of the Commissioner in order to reassure the public and to allay the anxiety which has been caused by Maulvi Tamizuddin Khan's proposal and by its ready acceptance by the Hon'ble Minister.

The Hon'ble Khan Bahadur M. AZIZUL HAQUE: I can understand the vehemence of my friend, but I will charge him with a little bit of inconsistency, namely, when he was moving his amendment he said that the main question as to whether a wakf is a wakf or wakf-al-al-aulad has been clarified by us in the Act and it did not require much effort to find it out. He will find that we have appointed a special officer to deal with questions of this nature. As the appointment of a Commissioner of Wakfs has not been made, it has been asked if Government intend to give effect to the provisions of the Act so far as the constitution of the Wakf Board and the appointment of a Commissioner are concerned. I can tell you that the Wakf Act received assent on the 19th July, 1934, and we appointed a special officer within two months to carry out the preliminary work and by December 15, 1934, we appointed a special officer and his staff to make a survey under this Act. My friend knows that we have to get money and sanction of the Council in certain matters. Therefore, we have to wait at least for some time. The special officer and his staff have been doing this work and all those who have come in contact with them know perfectly well the amount of good work that they have done. They have already dealt with a large number of estates—4,000 and I think (I am speaking from memory)—with a gross revenue of over 50 lakhs. These have been tabulated in different forms and this tabulation is going on as quickly as possible. But this much I can assure my friend that I will try my best to get the Wakf Board constituted and the Commissioner appointed by the end of this financial year. I am trying to be as quick as

possible and the utmost limit of time that I can visualise is the end of the present financial year. Difficulties may crop in, but even if they crop in, as I anticipate, I can assure my friend that by the end of the financial year the whole Board will be functioning, and I think my friends will congratulate the Government in the Education Department on the speediest or quickest way in which they are doing the task which concerns the whole of Bengal—a task which concerns intricate revenue matters.

As regards its necessity we have already been threatened with litigation and notices have been sent. Our duty now is to see that an act that has been done by the Commissioner is protected, namely, that anyone who has a grievance may go to the Civil Court. In view of this assurance, I hope my friend will accept the proposal of Maulvi Tamizuddin Khan as amended by me.

The amendment was put and agreed to.

The question that clause 2, as amended, stand part of the Bill, was put and agreed to.

The question that clause 3 stand part of the Bill was put and agreed to.

The question that the preamble stand part of the Bill was put and agreed to.

The Hon'ble Khan Bahadur M. AZIZUL HAQUE: I beg to move that the Bengal Wakf (Amendment) Bill, 1935, as settled in Council, be passed.

The motion was put and agreed to.

The Court-fees (Bengal Third Amendment) Bill, 1935.

The Hon'ble Sir BROJENDRA LAL MITTER: I beg to move that the Court-fees (Bengal Third Amendment) Bill, 1935, be taken into consideration.

The object of the Bill is to correct an error in section 6 of the Act of 1935. It is a purely drafting amendment that I am proposing, but inasmuch as there are some motions for amendment, I think I had better explain the purport of the Bill. Section 6 of the Act is in the drafting inconsistent with a corresponding section in the Civil Procedure Code. In the Select Committee Babu Khetter Mohan Ray drew attention to this inconsistency. At that time the view taken was that the High Court under its rule-making power might make a rule consistent with the Court-fees Amendment Act; but the High Court has pointed out that it is more satisfactory that the Court-fees Act should be brought into line with the Civil Procedure Code than that the Civil Procedure Code should be brought into line with the Court-fees Act. In view of this, we in order to bring the Court-fees Act into line with

the Civil Procedure Code, have brought in this Bill. That is the object. Discrepancy has arisen in this way. Under Civil Procedure Code, Order 4, Rule 1, a suit is instituted by presenting a plaint to the Court. As soon as the plaint is presented, particulars are entered in a book called "Register of civil suits." That is purely a formal matter. It has no legal implication. It does not affect the rights of the parties in any way. After that summons is issued on the defendant to appear on a specified date. Then, under Order 7, Rule 1, it is provided that the plaint shall contain inter alia a statement of the subject matter for the purpose of jurisdiction and court-fees. The plaint must show what the value of the suit is and must indicate what the proper court-fee ought to be. Then, under Rule 11, it is provided that the plaint shall be rejected if the plaintiff fails to supply the requisite court-fee within the time fixed by the Court. That is the provision in the Civil Procedure Code. The stages are—presentation of the plaint, entering it in a register, and issue of summons; and then the Court can at any stage decide whether the proper court-fee has been paid or not. If by a date fixed by the Court the proper court-fee is not paid, then the plaint is rejected. That, Sir, is the provision of the Civil Procedure Code. In the original Court-fees Act of 1870 it was provided that no document should be filed, exhibited or recorded in any Court or should be received or furnished by any public officer unless the requisite court-fee was paid. Now, Sir, this was very ambiguous, and, therefore, we brought in the previous amending Bill, which is the Act of 1935. The amendment that we made was that the Court might receive a plaint on the receipt of court-fee subject to the following conditions—

Firstly, that no claim should be registered unless a reasonable sum is paid within a time fixed by the Court; and if not paid, the Court shall reject the claim.

We attached some importance to the registration and gave it some legal implication. That is inconsistent with the registration under the Civil Procedure Code, but the substance is the same, *i.e.*, if the requisite court-fee is not paid within the time fixed by the Court, the plaint is liable to be rejected. That, Sir, is the provision in the Civil Procedure Code, and that is also in our Act. But in the Court-fees (Bengal Third Amendment) Act, 1935, this registration is a necessary element in the procedure, whereas it is only a formal matter under the Civil Procedure Code. We want to go back now to the Civil Procedure Code, and that is why we are proposing that in the present sub-section (*2*) of section 6 of the Court-fees Amendment Act, 1935, the following shall be substituted, viz.—

"subject to the condition that the plaint or memorandum of appeal shall be rejected unless the plaintiff or appellant, as the case may be, pays to the Court within a time to be fixed by the Court such reasonable sum on account of court-fees as the Court may direct." The substance

is there; only we have eliminated registration as a condition precedent. That is the object of our amending Bill, Sir. I move that it be now taken into consideration.

The motion was then put and agreed to.

The question that clauses 1, 2 and 3, and the preamble stand part of the Bill, was put and agreed to.

The Hon'ble Sir BROJENDRA LAL MITTER: Sir, I beg to move that the Court-fees (Bengal Third Amendment) Bill, 1935, as settled in Council, be passed.

The motion was put and agreed to.

The Calcutta Municipal (Second Amendment) Bill, 1935.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Sir, I beg to move that the Calcutta Municipal (Second Amendment) Bill, 1935, be taken into consideration.

Sir, by the Bengal Motor Vehicles Tax Act of 1932 the right of local bodies to impose a tax on motor vehicles was superseded, and so the Calcutta Corporation's right to impose that tax was also superseded. The result now is that people who were enfranchised before on account of the payment of the motor vehicles tax have been disenfranchised. Therefore, the Calcutta Corporation moved Government towards the early part of this year for reinserting the provision by amending the Act so as to reintroduce the provision for enfranchisement for the payment of motor vehicles tax, and Government, after fully considering the question, have decided to amend the Act on those lines, irrespective of the fact that this tax is now a provincial tax and is paid not to the Calcutta Corporation but to Government.

Sir, clause 3 of the amending Bill provides that notwithstanding anything contained in the Calcutta Municipal Act, 1923, or the rules made thereunder, the provisions of this Act shall apply to the next general election which is going to take place in March, 1936, and will bring the motor vehicles tax payers on to the electoral roll for the next general election.

With these words, Sir, I move my motion.

The motion was put and agreed to.

The question that clauses 1, 2, and 3 and the preamble stand part of the Bill was put and agreed to.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Sir, I beg to move that the Calcutta Municipal (Second Amendment) Bill, 1935, as settled in Council, be passed.

The motion was put and agreed to.

The Bengal Land Registration (Amendment) Bill, 1935.

Mr. O. M. MARTIN: Sir, I beg to move that the Bengal Land Registration (Amendment) Bill, 1935, be taken into consideration.

Sir, I have not very much to add to what has been stated in the Statement of Objects and Reasons. I notice, however, that there are two motions on the agenda—one for the circulation of the Bill for eliciting public opinion and the other for omitting clause 2. It seems to me, therefore, that certain of those gentlemen who represent the landlords' interests are a little bit nervous about the effect of this amending Bill. I may assure those gentlemen, however, that this Bill has been introduced on the strength of the unanimous opinion of District Officers and Commissioners in favour of it, and that the matter was carefully and fully discussed at the Commissioners' Conference, and everybody was unanimously of the opinion that the landlords' interests would not in any way be prejudiced by this Bill.

Clause 2 of this Bill should be retained not only to avoid unnecessary expense to Government in the issue of notices, but in order to prevent unnecessary harassment to landlords by the issue of notices which might lead for their unnecessarily appearing before the Collector.

Mr. SARAT KUMAR ROY: I beg to move that the Bill be circulated for the purpose of eliciting opinion thereon by the 15th January, 1936.

Sir, I admit that the provisions of the second paragraph of section 78 of the Bengal Land Registration Act are ignored by co-sharer proprietors of estates in certain cases and by mutual agreement or for some other reason, one of them may be realising the entire 16 annas rent from particular tenants while the other co-sharer of the same estate may be realising 16 annas rent from the other tenants. Although this is permitted to be done by mutual and tacit consent on the part of such co-sharer proprietors, I do not think that such practice is a universal one. But it must be admitted that the principle underlying such mutual agreement is unquestionably wrong. Because through lapse of time these anomalies may grow into inequities. The law should not allow such inequities to grow, and I think the duty of the legislature is to lay down what is equitable and fair for all parties concerned.

Then again, Sir, apart from this aspect of the question, what I am afraid is that unquestionably this change in law would affect a large number of *zemindars*. I do not think they have got sufficient opportunity to examine the pros and cons of the changes proposed in this Bill. Their interest will be affected at least to a certain extent by the third clause of this Bill. Sir, so far as I can see, there is hardly any reason for making any hurry over this measure. If the Bill be circulated till the middle of January next, I hope there will be time enough left for considering this Bill in the next session of the Council, and if that is done I think that no harm will be caused to anybody.

I therefore move.

Babu SATISH CHANDRA RAY CHOWDHURY: Sir, I beg to support the motion for reasons other than those already stated by my learned friend.

Sir, the amending Bill is intended to avoid certain expenses of issuing notices while preparing new Registers in place of the old A. and C. Registers.

In other words, the Government wants the new Registers to be based entirely on the settlement record in which many changes were made in the units of survey of *mauzas*. While, Sir, the amendment proposed by the Hon'ble Member is apparently harmless and in consonance with reason and convenience so far as the administration is concerned, I would like to state that it may create difficulties and affect adversely the interests of the proprietors.

It is well known that in the settlement map many *mauzas* existing in the Thack and R. Survey are not shown. The A. C. Registers—rather old and condemned—contain the names of those *mauzas* and units.

So, whenever any dispute arises as to the existence and the proprietorship of such *mauzas* (which have been swallowed up in some bigger units) the only evidence in support of the claim of such proprietors is the old A. C. Registers.

If the new Registers are based entirely on the settlement map and those old Registers are destroyed in course of time, as they must be, then the difficulty in the way of proving the claims of such proprietors are obvious.

Therefore, in my opinion, the old Registers should exist side by side with the new ones and should never be destroyed if the new Registers are to be shaped on the C. S. map and record alone.

Secondly, notices ought to be issued to the landlords and tenants for the obvious reason that the settlement records contain many errors which are exposed almost every day in our Courts, and in some cases grievous errors do creep in. As an example, we find in many cases

that if one starts measuring from a particular point to a particular direction, he gets certain lands included in a particular *mauza;* but if a measurement is taken from the opposite direction, the result is quite the other way. I think, Sir, that during the earlier stages of the settlement operations when the preparation of record-of-rights was going on many persons interested allowed judgment to go by default not having any experience of the preparation and maintenance of the records. The service of notice is not only in the interests of the parties, but it is also in the interests of administration. So care should be taken that errors to whomsoever they may be due do not vitiate the records. So I think the proprietors of the *mauzas* concerned, whether their names appear in the settlement record or not, should be allowed to appear and state their objection when the preparation of the new record is made, so that corrections may be made also in the old records. As a long time has elapsed since the settlement records were prepared, no change ought to be made in these records without consulting the persons interested.

Sir, there is another change I find in the Bill itself which is also very important. It is that in the old section 28 of the Land Registration Act it is provided that the notice required under this section shall be served in the manner prescribed by section 50 which lays down that the service of notice should be made at the cost of Government. But here we find that in all cases, *i.e.*, in cases not coming under the exception when of course the settlement record is there, where a proprietor or shareholder applies for a correction of a record, he is entitled to have the notice issued under the present law by the Collector without charging any cost. I find in the amendment Bill that there is not only an attempt to bring up the Register to date basing it on settlement records, but there is also an attempt to take away the healthy provision of the existing law that the notice should be issued at the cost of Government. By omitting this portion of section 28 the effect will be that in all cases where there is an exemption now, that is, the parties have not to pay the cost of the notice, they will be saddled with this cost. I would also draw the attention of the Hon'ble Member to section 50 and the circular of the Board of Revenue issued under that section. The section rigidly lays down that in all cases of this nature the cost should be borne by Government and the circular I am referring to is circular No. 5 of 1877 whereby the Board of Revenue draw attention to the fact that in some cases the Collectorate officers either through negligence or deliberately charge cost on the parties which must be forbidden and an attempt to do so must be punished rigorously. That, Sir, is the rule at present, but by abrogating it you are certainly increasing the burden on the proprietors and shareholders, although the task of maintaining the Registers is not only in the interests of the proprietors and co-sharers but also in the interests of the Collector; it is in the interests of both that the Registers should be kept up to date and

maintained correctly. For all these reasons, I think that in spite of the opinions of Collectors, as has been stated by the Hon'ble Member in charge, the opinions of the proprietors who are affected by this Bill should also be invited. I doubt whether all the Collectors gave their opinions in favour of charging the parties with costs; even if they did so, I doubt if they favour the amendment that henceforward the costs of notice should be realised from the parties. I presume, however, that this amendment has been made without consulting the interests of those who are vitally concerned in the matter. For all these reasons I am in favour of circulation. Of course, if the Government does not think it necessary, I would ask them to do it in such a way as to reconcile between these two views and see that the Registers be maintained up to date without adding any burden on the people. With these observations, I support the amendment that the Bill be circulated. My own amendment practically aims at the same result in that it asks for the omission of clause 2.

The Hon'ble Sir BROJENDRA LAL MITTER: Sir, may I with your permission deal with the point raised by Mr. Sarat Kumar Roy in regard to clause 3? I shall deal with that point only. He thinks that the second paragraph of section 78 of the Act ought to stand. The second paragraph is this: No person being liable to pay rent to two or more proprietors shall be bound to pay to any one such proprietor more than the amount which bears the same proportion to the whole of such rent as the extent of the interest in respect of which such proprietor, etc. It comes to this: There are, say, two proprietors in equal shares and by agreement between the proprietors and the tenants the tenant of one holding pays 16 annas to one proprietor, the tenant of another holding pays 16 annas to the other proprietor; that is done by agreement between the parties. If paragraph 2 stands, the effect is that a tenant may have to pay twice over, because he pays, under the agreement, 16 annas to one proprietor when under the law he is bound to pay 8 annas only. Payment of one-half is thus voluntary payment which the law does not recognise. So, the other proprietor may sue the tenant for his 8 annas, although there is an agreement, because the tenant cannot set up the plea of estoppel. There is no estoppel against statute. If there be a statutory provision, then the tenant will have to pay 8 annas twice over. If this paragraph goes, the position will be that if the second proprietor sues the tenant for his 8 annas, the latter can set up the agreement by way of estoppel and will get relief. That is why the existence of this clause is unfair to the tenant. No one will be prejudiced if this clause goes and the agreement becomes operative. That is why we propose to omit it.

Mr. O. M. MARTIN: With your permission, Sir, I should like to deal with some of the other objections to clause 2 which have been

urged before this House. The last sentence of section 28 of the Act is that the notice required under this section shall be served in the manner prescribed by section 50. I would point out that this is not a part of the proviso. Clause 2 of the present Bill is to the effect that instead of the existing proviso certain words shall be substituted. There is no intention, and the Bill has not the effect, of deleting the last sentence of section 28.

Sir, with regard to the views expressed that clause 2 of the Bill will be prejudicial to the interests of the *zemindars*. I would point out that the actual effect of the settlement operations is a rewriting of Registers A. and C. by the Settlement Department after local enquiry on the spot and after the issue of notices. In fact, it is a correction of the Registers A. and C. in order to make them much more accurate and after a more detailed enquiry than the Collector can possibly carry out himself. It would be very anomalous if after a complete enquiry made by the Settlement Department including issue of notices, the Collector should be obliged to start all this enquiry afresh in a less adequate manner with less means at his disposal for the proper correction of the Registers. It is not contended by Government or by the Settlement Department that Registers A. and C. after correction are always absolutely correct. What they say is that they are as correct as they can possibly be made, and that the effect of issuing fresh notices would be that the Collector as well as everybody concerned would be put to a lot of unnecessary trouble. The Collectorate would be put to a lot of expense, *zemindars* would have to appear, there would be a lot of argument, and nothing of material advantage would happen in the end. I could understand the objections of the *zemindars* with regard to this Bill if the new Registers A. and C. were never to be altered again, if they were to remain in the Collectors' offices incapable of correction and if the old Registers were to be destroyed. But the old Registers A. and C. are to be permanently preserved in the Collector's record room, and if at any time any *zemindar* finds that there is an error in the new Registers, he can petition the Collector and have the mistake corrected. There is no objection in law or difficulty in practice to such necessary corrections being made. There is, therefore, no risk involved to the *zemindars* by this Bill because if any *zemindar* finds himself prejudiced by any new entry, he can always apply to the Collector for its correction, referring to the old Registers which are in the Collector's record room.

The amendment was put and lost.

The motion that the Bill be taken into consideration was put and agreed to.

Clause 1.

The question that clause 1 stand part of the Bill was put and agreed to.

Clauses 2, 3 and preamble.

The question that clauses 2, 3 and the preamble stand part of the Bill was put and agreed to.

Mr. O. M. MARTIN: I beg to move that the said Bill, as settled in Council, be passed.

The motion was put and agreed to.

The Bengal Agricultural Debtors Bill, 1935.

(Discussion on the Bengal Agricultural Debtors Bill, 1935, was resumed.)

Mr. S. M. BOSE: I was dealing with section 20 of the Punjab Act of 1934. I stated that under the Punjab Act two things must co-exist. First of all, that at least 40 per cent. of the number of creditors should agree on certain terms, and, secondly, the terms should be regarded as fair by the Board. Then only can the other creditors be forced to accept those terms, and it is further provided in sub-clause (*3*) of section 20 of the Punjab Act, 1934, that no creditor who has not agreed to these terms can execute his decree until six months after the expiry of the period fixed in the agreement. The agreement mentioned is what we have in clause 19 (*1*) (*a*), where it both debtors and creditors agree, a certain time is given for the payment of those debts. So, until six months have elapsed since the expiry of the time provided in the agreement between debtors and creditors, no execution shall issue. Our Act is vastly different. It says in clause 20 that 40 per cent. of creditors need not agree. Even if not a single creditor agrees, if the offer of the debtor is regarded as fair, the Board can grant a certificate against the unanimous desire of all the creditors, and the effect of the certificate will be to postpone all these debts until the award is exhausted, which may mean any period up to 20 years. If debts are not paid in 20 years, then under clause 21 insolvency proceedings have to be undertaken. So under clause 20, as it stands, the creditor who does not agree has to be postponed up to a period which may extend to 20 years, which is not in the Punjab Act.

I turn to the Hon'ble Member's next favourite, the Central Provinces Act. In this Act, section 15 says, that if the terms are regarded by the Board as fair and the creditor does not agree, then he cannot execute any decree till six months after the period provided in the agreement between the debtors and the creditors, not for any period up to 20 years after the award is finished as here. The Hon'ble Member has been quoting from the report of the Board of Economic Enquiry. They sent a draft Bill. I refer to clause 14 of this draft Bill. It does not speak of any certificate at all. If the terms appear to the Board

to be fair, the Board may frame an award covering all the debts of the debtor. There is no question of the creditor's payments being postponed till the Greek Kalends, as it is proposed to do by clause 20 here. I have referred to the Central Provinces and to the Punjab. There is an Act lately passed in 1935 called the Madras Agricultural Loans Act, where they speak of *voluntary* arrangement between creditors and debtors and there is no compulsion. The enlightened, not benighted, Madras Government, advance money to the agriculturists to pay debts agreed upon between debtors and creditors. Of course, our enlightened Government here will do nothing of the kind.

Then, in Mysore similar arrangement for debt conciliation has been made, and from the report I find in the *Statesman* of the 4th November last, it appears from the report of the Agriculturists' Relief Committee accepted by the Mysore Government that when there are several creditors, the decree will be binding only if a settlement is agreed to by creditors to whom not less than 50 per cent. of the debts is due. Where there are secured and unsecured debts, the further condition should be satisfied, that creditors, to whom not less than 50 per cent. of the secured debts due have agreed to the settlement. When a settlement is arrived at, the Board will attempt to arrange payment to the creditors of the amount of the settled debts through land mortgage banks or co-operative societies. The point I refer to is that in Mysore there is no such provision of compulsion. Let us go outside India to Zanzibar. In Zanzibar they have gone on the lines of the Central Provinces and Punjab Acts for debt conciliation, and in this connection, I refer to an extract from the *Statesman* of Monday, November 5. There the main step suggested by the Zanzibar Enquiry Committee is the adjustment of debts by an amicable settlement through Conciliation Boards similar to those which have been established in the Central Provinces under the Central Provinces Debt Conciliation Act of 1933 and in the Punjab under the Punjab Relief of Indebtedness Act of 1934. So far of all the provinces I have mentioned in India and outside, namely, Punjab, Central Provinces, Madras, Mysore and Zanzibar, nowhere is there anything like drastic compulsion as that advocated in clause 20. Even the Board of Economic Enquiry did not say anything of the kind; but we have gone one better—better than anybody else in the world. Our Government will not advance any money, but talk of enforcing compulsion. The effect of clause 20, as has been said, is to postpone the creditor who had the temerity not to accept the *ipsi dixit* of the Board to the Greek Kalends. They are not to execute a decree at all until an award had been paid off. The award may go on up to 20 years; the poor creditors who defied the Board have to wait. Further, Sir, I would draw your attention to the last two lines of this obnoxious clause 20. It says—even if there is no award, then the poor creditor who has to be punished for his temerity, that creditor has to wait up to 10 years until the award has been satisfied.

You cannot sue for up to 10 years. That is the punishment. If there is an award, you will be punished up to 20 years. If there is no award, you will be punished up to 10 years, says this clause.

Let me deal with a case where there is no award. I refer to clause 17. This clause speaks of a case where the Board may refuse to make an award. Briefly, the reasons which may entitle a Board to refuse to make an award are when under 17 (*l*) (*a*) a debtor is attempting to use the provisions of this Act with a view to defraud any creditor, and under clause 2, sub-clauses (*a*) and (*b*) "when such application includes a claim which is intended to defraud any creditor, or if there has been transfer of any property by the debtor within two years....." So even in the case of a fraudulent applicant, where the application is tinged with fraud right through, when the Board has therefore refused to consider the application at all, and no award is made, even then the creditor can be postponed up to 10 years. I see no reason at all for this compulsion. I understood that the Government would not have power of compulsion. But what is clause 20 but the power of naked, undiluted compulsion. The Hon'ble Member the other day said— —

(The member here reached his time-limit, but was permitted to continue for 5 minutes longer.)

The Hon'ble Member the other day was saying that a great many people wanted far more drastic provisions. Evidently he was aghast at his own moderation. "I was recommended to take far more drastic measures, but I have not, go down on your knees and be thankful," says he. Sir, what is this if not pure compulsion; what more compulsion can there be over and above that provided in clause 20? I can see no difference at all. Further, the hon'ble mover has said, if clause 20 is enacted, what is the use of clause 19? Why not throw the whole Bill into the waste paper basket and have only one single clause, clause 20. Whatever terms are regarded by the Board as fair, whether any single creditor agrees or not, he shall be compelled to accept. Why go to the farce of having clause 19 which speaks of 40 per cent. and 60 per cent.? In effect clause 20 makes clause 19 superfluous. There is no need of clause 19. No need of 40 per cent. There is no need for a debtor to go on his knees to get 40 per cent. of the total creditors to agree, because under clause 20 he can go to the Board and make his offer which will if the Board thinks fair have to be accepted. In this way the creditor is penalised. He will be compelled to accept certain terms. If he does not accept this, he must not sue for a long time. I therefore think that clause 20 is absolutely uncalled for. It is pure compulsion. Nothing like clause 20 is to be found anywhere. I would ask the Hon'ble Member in his reply not to rely upon his battalion of voters, but to try to argue and show that we are wrong. Our point is that such a provision is not found anywhere else. I shall be very much obliged if the Hon'ble Member instead of declining to

meet my argument, as he has done before, will try to meet it. I beg of him not to express surprise by saying that Mr. S. M. Bose has the temerity to put forward this amendment. This clause 20 and clause 13 (*3*) were the bones of contention between the Hon'ble Member and us, and in moving this amendment I hope he will not say I am doing nothing wrong. I support the amendment.

Babu KHETTER MOHAN RAY: Clause 20 as it stands is very drastic and revolutionary. Clause 20 authorises the Board to grant a certificate to a debtor in respect of a debt if a creditor does not accept the offer which the Board considers to be fair and reasonable. The gist of this clause, to say the least of it, is highly dangerous in so far as it enacts that no decree for the recovery of such debt shall be executed until all the amounts payable in respect of other debts of the debtor under an award has been paid off or such an award has ceased to exist under section 26, or if there is an award until the expiry of such period not exceeding 10 years as may be specified in the certificate. Now this provision is so drastic and inequitable and arbitrary that it is likely to frustrate the very object of this Bill. The conditions in the Central Provinces and in the Punjab in so far as the indebtedness of the agriculturists is concerned are far more depressing and appalling than those prevailing in Bengal. Even the authorities in those provinces did not think it necessary to have such drastic provisions as in this clause incorporated in their Acts. The portion of clause 20 which I have referred to is peculiar to Bengal and does not find a place in the Central Provinces and the Punjab Acts. Clause 19 of the Punjab Bill deals with the procedure when a creditor refuses a reasonable offer by a debtor. Both the Punjab and Bengal Bills provide for the issue of a certificate or award by the Board. But the present Bill boldly declares that no decree for the recovery of the certified debt shall be executed even if there is no award until the expiry of such period not exceeding 10 years. This is simply a revolutionary provision enjoining the creditor not to proceed with the execution till 10 years have elapsed. If we analyse the provision of this clause, we find that it has a communistic tendency inasmuch as it contemplates certificate against the wishes of a creditor and postponement of execution of decrees till the debts in respect of which an award is made are cleared off and in the absence of an award till the expiry of 10 years.

The personnel of the Board as far as I understand will be recruited from the villages and they will be no better than the Union Board Benches which are functioning in the villages. Many of the Union Benches have been abolished by Government after giving them a trial. If these Boards which will be functioning in the villages are entrusted with such drastic powers, they will exercise those drastic and revolutionary powers in a manner which will not be conducive to the welfare of the creditors. I appeal to the Hon'ble Member to see whether such drastic provision will not have the effect of alienating the sympathies

of the persons who are for relieving the rural indebtedness. With these words I support the motion moved by my friend Mr. Sarat Kumar Roy.

Maulvi TAMIZUDDIN KHAN: I rise to oppose the motion for deletion of clause 20. Mr. S. M. Bose has characterised that clause as the most obnoxious clause in the Bill. I submit that this clause is the most useful clause in the Bill, and the Bill will be practically of very little use unless there is a provision like this in the measure. We know by this time that the principal object of the Government, in introducing this Bill, is that there may be conciliation of the debts of the peasantry of Bengal and there are various clauses in the Bill, which show that the intention is that strenous efforts will be made by the Boards to be established under this Act to effect conciliation between the debtor and the creditor. Government introduced this measure with the best of intentions and hope that all sections of the population including creditors will co-operate. I am sure that the vast majority of creditors will co-operate, but it is just conceivable that there may be a small number of recalcitrant creditors who will refuse to co-operate and try to make the operation of the Bill absolutely impossible. The question is whether there should be any provision in this measure for dealing with this recalcitrant creditor; I would say that this is exactly such a clause. It is never contemplated I think that this clause will come into operation very frequently; it is only in extreme cases that the operation of this clause will be called for. Mr. Bose has said that there is no such clause in the other measures which have been passed in other provinces in India and also even in Zanzibar. I submit there may not be provisions exactly similar to this provision in those Acts, probably because conditions in those places are not exactly similar to those prevailing in Bengal. Again, those measures were passed at a time when economic conditions were very different from what it is at the present time. Those measures were passed long ago. I think the Bengal Government has not been well advised in waiting so long. As Government has waited so long and has allowed conditions to become almost desperate, I think the circumstances prevailing at present require something more drastic than might be considered necessary some years back. Mr. Bose says: "What is the reason for this compulsion?" I submit that after all it is not a very drastic compulsion; it is a very mild form of compulsion that it is proposed to be imposed. It might have been made more drastic and the legislature might very well provide that in cases in which the Board thinks a particular offer from the debtor to be fair, an award should be given according to that offer. But that power is not being given to the Board. The clause simply says that when there is a fair offer, unless the creditor accepts that fair offer he must be content with the postponement of payment; that is the only thing that is provided here.

Mr. Bose also pointed out another so-called enormity in this measure and this, he says, is provided in the last two lines of this clause. The clause provides that unless a creditor accepts a fair offer the Board can give a certificate that he will not be able to execute his decree unless all the other amounts payable by the debtor to other creditors under a particular award are paid off or if there is no award unless a period not exceeding 10 years has elapsed since the giving of certificate. My friend says awards will be refused only in cases in which the debtor comes forward with a fraudulent statement in his application. My friend is absolutely mistaken when he says so. Those cases are not at all contemplated in this clause. If the application of a debtor is refused or dismissed on the ground that he has included a fraudulent statement in his application, in that case his application will not be entertained at all and nothing further will be done in respect of the application. He will not be allowed to come before the Board for a second time; since he has come forward with a fraudulent statement he is finished once for all, so far as proceedings before the Board are concerned. This clause contemplates other cases in which there will be no award for example when there is only one debtor and one creditor. If this one creditor refuses to accept a reasonable term, there will be no award. In this case the Board will be able to give a certificate to the effect that the creditor will not be able to execute his decree unless a period not exceeding 10 years has elapsed since the passing of such an order. I submit that Mr. Bose was absolutely mistaken when he tried to interpret the last two lines of the clause.

My friend Mr. Khetter Mohan Ray says that this clause smacks of a communistic tendency. I do not know what grounds my friend has got to propound a proposition like that. Far from that, as I pointed out the other day, the peasantry of Bengal is over head and ears in debt and unless some relief is given to them they are bound to become landless labourers in no time and that is how we apprehend communism may come in. It is a very salutary clause and as I have already shown it will not be brought into operation every now and then but only in extreme cases. It is the fear of this clause that will make refractory creditors accept reasonable terms. We think that the Boards that are going to be established will enjoy the confidence of all people. Government will certainly try to find out persons who enjoy such confidence. Why should we then presume that the Boards will be unjust to creditors? The Boards will be in a position to decide whether a particular offer is a fair one and when they decide that certain terms are fair to the creditor, the creditor will have no reason to refuse those terms. If he refuses, he must take the penalty provided by this clause. I think this is a reasonable provision and without this provision this measure will be practically infructuous. With these words I oppose the deletion of this clause.

(The Council then adjourned until 2-15 p.m.)

(After Adjournment.)

Maulvi SYED MAJID BAKSH: I am sorry that my friend, Mr. S. M. Bose, is not here, as much of my remarks would deal with his objections. While my friend, Mr. S. M. Bose, was prowling about in the wilds of Africa and moving about in Zanzibar and elsewhere, I thought that he would wander further up the map and land himself either in Abyssinia or in Italy; he would then have found that there was such a thing as sanctions. This is the only section that has some power behind it by which this Act can be put into operation, and that is why objection has been taken to it. I think my friends will agree with me that for enforcement of provisions which are more or less of an advanced character that is embodied in this Bill, some sort of power to make the creditor and the debtor to come to terms is necessary. Just as in the Constitution which we are going to have—and I do not think Mr. S. M. Bose has got anything to say against it—we have safeguards, so in this present Bill, we have this section 20 as a sort of safeguard. It is not necessary that this section must be put into operation every now and then, and the first thing the Board, being quite new to its work, would do was to proceed with the other sections of the Act and not under section 20. It is not a fact that the Board, inexperienced as it must be in the beginning, and as has been characterised by Mr. S. M. Bose, would at once proceed to utilise the provisions of this section, but what would actually happen was that the Board would first of all try to deal with the matter on a basis of amicable settlement, then on the basis of giving an award which would be fair in accordance with the provisions of this Act, and after having tried those remedies and after having exhausted all sincere attempts at relief being given to the debtor, if the Board found that nothing could be done on account of the obstinacy of some recalcitrant creditors who would not part with their "pound of flesh," in the well-known language of Shakespeare, then and then only would the Board proceed to apply the provisions of this section. I think, however, that not even in 1 per cent. of cases, the application of this section will be necessary. On the other hand, the mere presence of this section will enable the creditors to come to an agreement; just as the safeguards are there to ensure the smooth working of the coming Constitution, so this power in the hands of the Boards will compel the debtors and creditors to come to terms and will also enable the Boards to discharge their functions according to the spirit of this Act. I, therefore, do not agree with those who say that this is a drastic measure, and that it does not find a place in any other Codes of this nature. Sir, I can say one or two things from my own experience in connection with the working of the land mortgage banks. There I have found that in a large number of cases it was possible to make the debtors and creditors come to an agreement, but there are cases also in which it was found absolutely impossible to make the

creditor agree to forego the smallest sums of money, although by interest the original capital sum has doubled or tripled itself. From our experience in transactions on land mortgage banks, we find that unless such a provision as this is made in the Act, it is impossible to make the Board work properly. Just as a contagion spreads from infected to uninfected persons, so if in this case one creditor proves recalcitrant, the contagion would spread to others who would otherwise have been agreeable to effect a compromise. Hence, the necessity for this section. Then, I do not think that the provision of this section is at all unfair. The creditor will not be refused his dues. The creditor will have access to Civil Courts to sue for his money. The section also provides for a fair rate of interest, namely, 6 per cent., whereas the present market rate is not more than 3 or 4 per cent. Of course, there will always be some who will not be satisfied with anything less than their 37½ per cent., as they will think that that is a fair rate of interest. Having collected some money somehow, these people want to eke out their existence by investing that money at that high rate of interest. I do not know whether my friends know how to calculate compound interest, but I was calculating it the other day, and I found that one rupee at the rate of two pice per month, that is 37½ per cent., would after 33½ years come to Rs. one lakh, and these people will not be satisfied with anything less than that. I say, Sir, for them this 6 per cent. is nothing, but considering the market rate at present, if the creditors get this money and invest it in one of the banks, they will not get even 6 per cent. So, nothing is being taken away from them. He is given the principal and interest at 6 per cent., but he is not given the fabulous rate of interest on which he thrived so long. I am sorry to say that it was possible for them to thrive in that way only because of the patronage of a power that did not hitherto care to know the condition of the peasantry of Bengal. That patronage they can no longer expect to get. They have enjoyed it long and have filled their pockets with ill-gotten gains, and they cannot have it any longer. If they want to earn money, let them invest their capital fairly in business. It is this high rate of interest which has ruined Bengal. The Marwaris and Bhatias have come and captured our business simply because the people of Bengal with capital were indulging themselves in money-lending at a high rate of interest. If you are deprived of this high rate of interest, you will have no other course but to go into business, and if you do that, you will be able to drive out the Marwaris. Therefore, it is also in the interest of these creditors that this section should remain.

Then as regards the provision that the certificates will remain in force for 10 years, compelling the creditors and debtors to come to an agreement, I wish that henceforward a new leaf will be turned by the descendants of the money-lenders who are now fighting their lost cause

in this Council. They will have this money withdrawn from unprofitable sources and will invest it in business enterprises which will make them thrive and give them a better return and ensure them a better prospect in their transactions than what this money-lending business can do. This money-lending business only heaps upon their heads the curses and the ill-fame that are attached in this country to money-lenders.

Babu SATISH CHANDRA RAY CHOWDHURY: Sir, even if were possible after reading through the other provisions of the Bill to think that Government were inclined to grant relief to a particular class of people and to believe in the *bona fides* of Government, although mistakenly, in the drawing up of the scheme, and in the working of the details when the Act is in operation, even then, on reading this particular clause of this Bill one cannot but carry this impression in his mind that there is something sinister, something not very laudable, in this particular clause of this Bill. Sir, this particular clause seeks to instal an undiluted autocracy in the villages; it seeks to instal unhampered and irresponsible despotism in the matter of deciding between the rival claims of the rival parties. It has been said in extenuation that this particular section does no more than safeguard the interest of the debtors in case creditors do not come to a settlement. If that be the object of this clause—to coerce creditors in case they do not agree to the provisions of section 19—in that case the other section will be absolutely unnecessary. Only this one section might stand. In fact, on reading this section one is tempted to say that here sanity in legislation is abdicating in favour communalism and all the "isms" that one can think of. Sir, I am opposed to all "isms," except rationalism which should be the only determining factor in establishing harmonious relations between one man and another. Sir, if we look to the purpose of this Act and ask whether Government are consistent and logical, we shall find that they are absolutely lacking in that. Looking at the Statement of Objects and Reasons, what do we find? What was it that was presented before us in the Statement of Objects and Reasons of this Bill? What was stated in it is, briefly, that it had been found by an experiment in Chandpur that it was possible to bring about an amicable settlement between the creditors and the debtors; that this scheme of amicable settlement worked very well, and was attended with very fruitful results. But when one hon'ble member of this House challenged the Hon'ble Member in charge of the Bill by saying that the experiment at Chandpur was an absolute failure and that it was coercion—absolute, undiluted coercion—that held the field there, in came the reply that this allegation was absolutely without any foundation, and that the charge had no legs to stand upon. Sir, I am ready to accept the assertion of the Hon'ble Member that in

Chandpur this experiment has been working very smoothly without any such piece of legislation. But in that case, we should rather have expected that instead of bringing forward such a drastic measure, the same experiment which has been so successful in Chandpur would have been extended to other places also. And the whole thing would have been done in a way that would have given satisfaction to all the parties. If amicable arrangement had succeeded there, why do you come here with a drastic clause like this? I think it is a pertinent question to ask, and accordingly I do put this question to the Hon'ble Member to answer. Now, Sir, it might in some cases be necessary to provide for some mild degree of compulsion. And when one is reading clause 19 and its sub-sections, one cannot help feeling that the whole thing is drafted with a solicitude to see that there is no settlement until we find that there is at least 40 per cent. agreement in order to compel others to accept the settlement and to accept the offer coming from a debtor on the basis of that agreement. So far we are prepared to go, and so far we find it possible to sail with Government. But beyond that I should say that Government is out of its depths. If however, there is a contingency in which we are asked to go beyond section 19, then in that case, I submit, there is a case which is no longer suitable for amicable settlement, but for coercion. Now, Sir, what is the justification for giving scope to the working of these two sections before you had tried a measure of mild compulsion in Bengal with the experiment of Chandpur before you? What justification have you got for introducing a drastic clause like this? It has been said, Sir, that this clause will be operated very sparingly, but, Sir, I submit that this clause will rather hang like the Damocles's sword, with these two sub-clauses, over the heads of the creditors. If practical considerations do weigh, I submit that if the clause is there, none of the creditors—40, 30, or 20 per cent. for the matter of that—will be in a position to give their voluntary support, to acquiesce voluntarily to any arrangement that may be thought of or to any offer that might come from any debtor, for he will be afraid that unless he comes to an agreement—it does not matter on what terms—section 20 will be ruthlessly applied against him. That, Sir, will be the picture before the mind of the creditor, and with that possibility, with that contingency there, can anyone say that, as a matter of fact, here is a case of voluntary agreement? Sir, one hon'ble member spoke, and spoke with a great deal of emphasis, on the rate of interest and all that. But I am in a position to say that the day is long past when an interest as high as 30, 40, or 50 per cent. was either insisted upon or could be even dreamt of. Here it is no longer the question of interest only, but it is a question of making any settlement even by making a reduction of the capital. Clause 19 (*c*) gives the Board power of even reducing the capital, but there is at least this safeguard there that 60 per cent. agreement is necessary. But section 20 does not provide any such safeguard, that when the

creditors do not agree—whether 40 or 60 per cent. of them—in that case, there may be deduction only on the score of interest, but the Board cannot enter into the question of whether the whole of the principal should be granted or not. So, there is this danger in section 20. One hon'ble member has assured us that this section would be applied only when there are only one debtor and one creditor. I fail to understand, Sir, the logic of this argument, because if it is confined to one debtor and one creditor on the one side, and on the other 40 per cent. of the creditors not agreeing, what will happen just in the middle of these two extremes? In fact, it would be applied and is meant to be applied to all cases where there will not be either 40 per cent. or 60 per cent. agreement, so that it will be kept as a sword hanging over the head of the creditor, or, in the alternative, he will have to face section 20. Sir, I do not attach much importance to assurances coming even from the Hon'ble Member in charge, not to speak of assurances coming from his supporters in this House. It may be the intention of Government that this section should not be abused, but what guarantee is there that when things are being worked by the Board, a Board like the one of whose composition we have already heard, they will not abuse the law or will not go against the hidden intention—not the expressed intention of the Hon'ble Member in charge? So, Sir, on such an assurance it is very difficult for us to rely in a matter like this. Sir, it is always the habit of Government, when an odious measure is placed before the House, to cite precedents—and not only to cite precedents but even to distort them in some cases—may not be intentionally distorted, but distorted all the same—in order to support a particular measure or a clause. Sir, when we were asked to rely on the Punjab Act, the Punjab Act was quoted as a precedent, but I submit that the provisions of the Punjab Act have no bearing on a case like this, and it will be noticed that section 20 of the Punjab Act makes no provision similar to the provision in clause 19 of our Bill. All that is said there is that the parties should be allowed to come to an agreement, and in case 40 per cent. of the creditors do agree to come to a settlement, in such a case only should a certificate be granted. There we may say that the certificate is the operative part of the substantive section 28. Here, Sir, section 19 lays down a rule of law and lays down the procedure by which that rule of law should be carried into effect, but section 20 is quite different. There, in the Punjab Act, however, sections 19 and 20 of the present Bill are merged together, and unless 40 per cent. of the creditors agree, in that case there cannot be any granting of a certificate, even if the certificate be mild in character. That is the certificate-holder, viz., the party in favour of whom the certificate is granted, will have to wait till the other debts are paid off. That, Sir, is all that is said about certificates; but there a certificate can never be granted unless 40 per cent. of the creditors agree; there is no mention of 60 per cent. This at

once shows the difference between the two Acts. I have already tabled an amendment with that object in view, for I quite see the force of the argument that if 40 per cent. of the creditors agree it should be sufficient, and in that case section 20 ought to come into effect and not otherwise. That is quite consistent and quite reasonable. That is enforcing a rule of law based on reason. But to take away section 20 out of section 19 and to reserve it for cases when section 19 will not be applicable is not logical, and then the scheme of the Bill altogether falls to the ground, as is alleged on the other side.

Then, Sir, with regard to the Central Provinces Act, apart from what Mr. S. M. Bose has drawn the attention of the House to, we find that in the Central Provinces Act it is only the unsecured creditors who come under the certificate procedure. There, also, there is a limit to the time during which the awarded debt is to be paid off.

(The member having reached the time-limit resumed his seat.)

Dr. NARESH CHANDRA SEN GUPTA: Sir, I am opposed to this amendment, but at the same time I must say that I am not in love with the section itself. It is a method which is described by our people as trying to touch your nose with your hand round your head. I should have thought that when section 19 provides that the Board may make an abatement without the consent of some creditors if 40 or 60 per cent. agree, that leaves out a great many cases. In this case in which not even 40 per cent. agree to anything without this section (20) the Board is powerless, and cannot do anything. For that purpose section 20 is introduced. I should have thought it much better to say that the Board should be able to make an adjustment which is fair and reasonable according to certain definite principles laid down by the legislature. I should have been glad if we had a procedure like that which would have been much simpler and would have caused much less hardship. What happens in this case? You have not the courage to say that the Board will settle debts on certain principles which it considers to be fair and reasonable. Well, you simply say that if the Board considers the terms of settlement to be fair and reasonable, it will give a certificate. That certificate keeps the creditor floating in the air. He can at some possible remote date bring a suit for his debts and if he succeeds in that suit, he can recover his dues with 6 per cent. interest from that date and no more. The Bill as drafted leaves many a lacuna. What will happen if he does not succeed in establishing in that suit that he is entitled to as much as he claimed. That does not appear from this section. There are numerous other gaps to which I will not refer at present. It would be much kinder to tell the creditors that they would get this much and no more. That would have been more reasonable. I do not see why the Board

could not have been given such a power, but I understand that such a proposal could not be made by this Council without the consent of the Governor General; and I would therefore abstain from making any such proposal. We have, therefore, to make the best of a bad bargain and to accept this section with such amendments as may be necessary; if you don't have a provision like this, your 40 per cent. and 60 per cent. will never be forthcoming to agree to a scheme which would enable the Board to act under section 19. Well, if it is possible for the creditors just to snap their fingers at the Board or if there is only one creditor to whom all the debt is due, then section 19 can have no application. If that is the position, the creditor will snap his fingers at the Board and can on the very next day sue the debtor. Why on earth and for what human reason such a creditor would agree to a reduction under section 19 I cannot conceive. Supposing a creditor is given a very valuable parcel of land or is given something in cash which he wants, in such comparatively few cases the creditor may agree; in other cases for what earthly reason should he agree. Therefore, unless you have some coercive power vested in the Board, section 19 would be inoperative. The Boards would be arranging for nothing and arriving at nothing. When a widespread effort of this character is being made, it must be made under conditions in which there is some assurance of success and under circumstances in which it is not bound to be largely futile

Sir, my friend, Mr S C. Ray Chowdhury, has referred to the experiment at Chandpur He said that although no coercion was employed great work was done there, but the great work - that is according to the Government case - covered only a small fraction of the total debt. When the Bill becomes law, perhaps in a certain number of cases it may be possible to arrange matters by consent without employing any coercion whatsoever. But we are not legislating for a certain number of cases. We are not taking a step by way of experiment to deal with a certain number of cases, but we want to make a determined drive at the whole load of indebtedness. For that it would not do to proceed in a half-hearted manner. We must make such provisions as would enable this instrument to work with success. Sir, much has been said about the hardship of the creditors in such cases. Well, I am sure there will be hardship if this section is retained; but I think it is possible to have some amendments made. But the creditors may be deprived of their costs, their contractual rates of interest, and their right to bring a suit immediately only if they have refused an offer which is considered to be fair; and I take it that the Government will, in the exercise of its rule-making powers, give some directions as to when an offer is to be considered fair. It is only when prima facie the offer is fair that the certificate will be issued. Therefore, except in cases of gross miscarriage of justice, a creditor

should be penalised and the certificate issued only when a really fair and reasonable proposal has been refused. A creditor who has refused a fair offer is not entitled to much sympathy.

Mr. P. BANERJI: Sir, I am glad to find that good sense has at last dawned upon Dr. Sen Gupta. In the beginning he was a great supporter of the Bill and he has now changed his view to a certain extent. We say that unless some definite principle is laid down in the Bill it is useless to hurry the Bill through the Council, because it will be altogether a dead letter. As we have got sections 18 and 19, I maintain that there is no necessity of retaining section 20. The Hon'ble Member said the other day that amongst many counsel there is wisdom and Dr. Sen Gupta supported by saying that when a motion had been tabled by so many members it was natural that it should be accepted. Similarly, I may say that as this motion has been proposed by so many members of this Council proposing the deletion of this section, this should be accepted. What we find is that no definite principle has been laid down in the Bill. Dr. Sen Gupta does not agree with this view when he says that if any creditor does not accept the offer which in the opinion of the Board is considered to be fair the certificate will be issued. We objected to this from the very beginning and we have said that there should be a definite principle laid down. We know from past experience that in the case of the Usurious Loans Act in which discretion was given even to the highest judiciary in the land it did not work, because there was an absence of any definite principle in it. Some time after, a similar Act was brought up in this Council by Khan Bahadur Azizul Haque, viz., the Money-lenders Act, where it was definitely laid down that the percentage of interest would be 15 and 25. That being the case, I maintain that if there is no definite principle laid down as is suggested by Dr. Sen Gupta it is useless to retain this clause. I fail to understand why an arrangement should be given effect to when the creditors do not consider an offer to be fair. We all know that a debtor will naturally be trying to make an offer which in many cases may not be acceptable to the creditor, but it may be argued that there is the Board which will consider whether the offer is fair or not. As we all know, Boards will be constituted throughout the land. In spite of the insistence on the part of members of this House to lay down certain qualifications for the Chairmen of these Boards nothing has been done. From that it appears that the Boards will be constituted of people who will be absolutely ignorant of these things.

Sir, Mr. S. M. Bose who has been accused of travelling in the forests of Sunderbans definitely pointed out that you will find nowhere a Bill of a similar nature. Then Mr. Tamizuddin Khan said that a similar Bill is worked somewhere—it might be in Zanzibar or he may be

referring to Honolulu or Timbuctoo. There is no denying the fact that this clause is absolutely unnecessary as it will cause trouble to the creditors. The penalty which this Bill imposes will be a very heavy penalty for a small offence. For instance, a creditor will have to wait 10 years before he will get anything after the other creditors have realised their dues and if any residue is left. As this clause will cause a lot of hardship to the people, I think we can very well do without it. As regards the conception of some members that the creditors are all people in affluent circumstances, I can tell them that they forget that in the countryside small sums are lent out in many cases by people of very small means and also by widows. This point has not been taken into consideration. Maulvi Syed Majid Baksh who is well versed in mathematical calculations thinks that the money originally lent is multiplied several times. He also suggested that the people should pay in their own money and get it done, and why complain of foreign invasion, of course, I say from the point of view of business—the Marwaris and others. I say that is not the position. The position is quite different. It is said it is against the doctrines of the Koran, against the Hindu Shastras, or against the Bible; so I cannot expect that Hindus and Christians alike should think that it is not against religion to take interest

With these words I support the motion.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Section 20, as I read it, is the only clause in the Act which is necessary for the proper working of the Act itself The other sections 17, 18, 19, these are the sections on which we have spent a lot of time in discussion, but from the experience of other provinces we all know that these sections will not help Bengal peasants at all. To think that 40 per cent. of our Bengali people will unite in coming to some definite understanding is probably what many of us cannot conceive. We two cannot agree For us to think that 40 per cent. of all those who can get money from certain debtors would agree, is an impossible idea for us to conceive. When all those sections fail, what will happen if this section be dropped. After all, what is this section? It is simply an enunciation of a *moratorium*, nothing else. Does not my friend Mr. Bose who has spoken on the subject even believe that the time has come when a *moratorium* ought to be granted in Bengal? Is it not a fact that not only the Bengal peasants but even the higher classes are in such a state that if a *moratorium* is granted not only for the poor peasants as now suggested but for the bigger people as well, it will be in the general interest of the country? I would not have spoken on this, but I want the Government to understand that the principle of *moratorium* which they are now enunciating in this Bill should be the guiding principle in all

the other Bills that are before the House, and this Bill ought to operate in future for the middle class people as well. Then the question would arise if there is a general *moratorium*, how will the Government work? Will all transactions in Bengal cease? I do not believe that if the *moratorium* that we are now suggesting here is accepted and acted upon, it will do any mischief to Bengal and if one of a similar character, with safeguards, be extended for the other class of people as well, it will help everyone concerned. If it is conceded that a *moratorium* of 10 years is a sufficiently long term, it may be possible; if it is working hardship in the country, I do not know why it should not be possible for some of us to bring in a small Bill suggesting that the *moratorium* should be for 5 years if the financial position improves. It will be possible for any member to come forward with a Bill asking that a *moratorium* for 10 years which has been suggested in this Bill is too long and it should be only for 3 or 4 years, if the condition of the people improves and if the price of jute and other primary products of the country improve. If you take it as punishment it is irritating as every punishment irritates a man, so why take it as a punishment? I say in the present abnormal condition of things a *moratorium*, a partial *moratorium*, should not be objected to by any one of us. *Moratorium* of all joint stock companies— –

The Hon'ble Khwaja Sir NAZIMUDDIN: What have we got to do with a *moratorium* here?

Nawab MUSHARRUF HOSAIN, Khan Bahadur. If my friend cannot catch me, I am not to blame for it. I am perfectly in order. The section provides that if any creditor does not accept the decision of the Board, he will not be able to get the money within 10 years. Is that not a *moratorium*? When I say *moratorium* that is the usual word that is used in politics. So I support 10 years' *moratorium* as Government considers it necessary now. If even in 10 years' time things will not improve and the creditors should wait for a longer period before they get any amount which is over and above the amount that is considered to be fair, in that case what I want to suggest is this—that after 10 years one may expect to get back his money if he refuses to accept the award of the Board. That is one of the items in section 20, the other is very small, i.e., costs will not be allowed if he goes against the award of the Board. It is not much. These are the few things now suggested. If you do not accept this award, you must wait for the 10 years to get the money. In the case of joint stock companies I know every bank has now got 10 to 15 years' time within which depositors will not be allowed to get any money from these banks. If all the mufassal banks have got that advantage, if this advantage is

given to the debtors as well, what harm is there? Under the circumstances, I believe this is not a very bad suggestion. My friend considers that this is an admission on the part of Government that the people are in a very difficult position and that Government will not only try to help the poor debtors in the way suggested but should also try to help the people in other ways where their own pocket is also touched. This is no doubt a good idea and Government should follow it.

Rai Bahadur SATYA KINKAR SAHANA: After what I have heard from my friends I think I am not far wrong in thinking that I have got some inkling into the whole nature of the Bill. It was only the other day Nawab Musharrut Hosain Sahib said in this Council that this Bill was intended only for the benefit of the debtors, in spite of the fact that we got from the Hon'ble Member that this Bill was intended both for the benefit of debtors and creditors. Then my friend Maulvi Tamizuddin Khan in supporting the Nawab Sahib said that it was mathematically impossible to give relief to both parties—the creditors and debtors. He rather illustrated his saying that without injuring the creditors the debtors cannot be benefited. He himself probably agrees in the theory that Paul cannot be paid without robbing Peter. From all this I think that the Bill is intended for the benefit of the debtors only; the creditor has no place in it. Therefore, I am in solemn seriousness of opinion that it is useless to move the amendment I have tabled. I lay stress on the term "solemn seriousness" because only the other day Maulvi Tamizuddin Khan paid me a compliment that I hold the monopoly for humour. Whether that compliment was left-handed or right-handed, that is for the man who owns the hands paying the compliment, to say. I can only declare that I hold no such monopoly. Sir, for two reasons I do not and cannot hold such a monopoly, firstly, because under the British Government which still has a reputation for justice and equity monopolies are not available and, secondly, because I have not the adequate capital to secure a monopoly through the back door. My friend Maulvi Tamizuddin Khan is free to start a shop of his own and I can give him this assurance that instead of proving an obstacle I shall be a constant purchaser of his quips and cranks, quibbles and conundrums and such other trinkets that he may offer for sale.

Maulvi TAMIZUDDIN KHAN: Is he in order in speaking about a thing which I referred to several days ago?

Rai Bahadur SATYA KINKAR SAHANA: I come to the point. I had no mind to give any offence to my friend. My husky voice perhaps is responsible for urging my friend to haziness.

Though some of the psychologists are of opinion that human minds are so very weak that we always rely on supports for our mental working and this is evident from the working of the Hon'ble Member whose mind runs from the Punjab to Madras, from Madras to the Central Provinces if not to Honolulu and Kamaschkatcha as my friend Mr. S. M. Bose suggested for analogies to this Bill. I have also to seek for something of an analogy. I find an analogy in a book, which I read the other day, when Laplace, the great astrologer and mathematician, was showing to Napolean the relative position of the sun and the moon and other planets in his system.

Mr. PRESIDENT: We have no time to hear all that.

Rai Bahadur SATYA KINKAR SAHANA: Sir, let me have only two minutes to have my say. Napolean asked where was the place of God in this system. The astrologer answered that there was no place for God in this universe. Perhaps some future student of law will ask where is the place of law in this piece of legislation. The answer will be there is no place for law in this piece of legislation. As regards clause 20, I think my friend Mr. S. M. Bose has showed that it is unnecessary and unnecessarily harsh. After section 19 which has already been passed and forms a part of the Bill, there is no necessity for section 20. If section 20 be there, all the other sections should be done away with. The only supporter or apologist or defender of clause 20 said that it is only for those cases in which there is uni-creditor and uni-debtor, one creditor and one debtor, and the other clauses are meant for multi-creditors and multi-debtors, but there is no mention of it there. If that be the case, there should be an explicit mention of that.

Maulvi Syed Majid Baksh said that it is a prophylactic against the contagion of unwillingness on the part of the creditors. I do not know, I am not a doctor, and I leave it in the hands of my doctor-lawyer friends. I only support the amendment moved by Mr. Sarat Kumar Roy.

Babu JATINDRA NATH BASU: I desire to point out that Nawab Musharruf Hosain has said that what clause 20 desires to effect is the promulgation of a *moratorium* to enable the debtor to stand on his legs in the interval. If it were a *moratorium*, then it should be a *moratorium* for all concerned, for all creditors alike, but what this particular clause aims at is a *moratorium* for those who are not in the ward, so that those that are within the award may benefit in the interval. A *moratorium* may be imposed up to 10 years, and within those 10 years those who are outside the award are not entitled to any benefit, and those that are in the award will be given the benefit, so that at the end

of 10 years nothing may remain for those that are outside the award. The law in such cases in other respects has been referred to, such as the insolvency law and the law as regards companies. Nawab Musharruf Hosain has referred to the operation of section 153 of the Indian Companies Act by which creditors are put off for a period fixed by the Court so that the banks may not crash and may continue functioning for the ultimate benefit of the creditors. There the *moratorium* affects all creditors alike, and does not affect a certain class only, injuring other classes. So also in the Civil Procedure Code there is an elaborate procedure laid down under section 73 of cases in which there are several creditors. There all the executing creditors share rateably in the assets and none of the executing creditors are left out. In such case there is a definite principle which the people, the legal people and the ordinary people, all can understand. Here you are imposing a *moratorium* for 10 years excluding some creditors from all benefit and including some others.

Dr. NARESH CHANDRA SEN GUPTA: May I point out that clause 19 applies to cases where there is no award?

Babu JATINDRA NATH BASU: I am coming to that. Ten years' rule will apply only to cases in which no decree shall be executed for such debts until all the amounts payable in respect of other debts of the debtor under an award have been paid off, or such award has ceased to subsist under sub-section (*4*) of section 26, or, if there is no award, until the expiry of such period not exceeding 10 years. I do not know whether the Hon'ble Member has carefully considered the wording or not. Suppose a debtor is a dishonest debtor and he has submitted such a statement before the Board containing false statements not only as to his property but also as to his debts, so that under clause 17 the award is not made, even that dishonest debtor under the wording as it is will have the benefit of 10 years. Such awards have ceased to subsist under sub-section (*4*) of section 26, or if there is no award until the expiry of such period not exceeding 10 years so that the dishonest debtor comes before the Board, files a false statement of his debts and of his assets and the Board does not make an award, then it is a case in which no award should be made. Even in these cases under this clause as it stands the creditors who do not come within the award can be put off, that is to say they do not come within the purview of section 10. The wording is so loose, so utterly loose that it is difficult to explain. Probably, Government may ultimately find it exceedingly difficult to bring the clause into operation and take the other portion of it beginning with the words "such award has ceased to subsist under 26 (*4*)." Section 26 (*4*) says: "If a certificate officer fails to recover any part of the amount recoverable as a public demand, he shall certify that it is irrecoverable and thereupon

the award shall cease to subsist and any amount payable under the award shall be recoverable as if a decree of a Civil Court had then been passed for its payment." And further provided "that when the proceeds of the sale referred to in sub-section (*1*) is insufficient to meet payment of the amounts payable under an award, the certificate officer shall inform the Board accordingly. The Board may then pass an order declaring that the debtor is insolvent." Even in these cases the creditor who does not come within the provisions of clause 19 may be compulsorily put off for 10 years. This is a provision which, I believe, even the Government do not probably contemplate, but the manner in which the clause has been worded leaves room for an interpretation to which I should like to draw the attention of Government. It is for that reason that I support the amendment that has been moved.

Rai Bahadur SATYENDRA KUMAR DAS: I also rise to give my support to the motion that has been moved for the omission of section 20. I am not a lawyer. My reason is very clear. If we are serious about section 19, then I submit that the introduction of clause 20 nullifies clause 19. Again, if we are serious about section 20, there is no place for section 19. It has been rightly said that section 19 becomes superfluous in that case. If amicable settlement be our objective why should we bring in an arbitrary and compulsory section like section 20. That is my reason for supporting the motion for deletion of the clause. I also appreciate the argument that a certain amount of compulsion may be necessary, but there are ample provisions for it in the Bill under other sections. Hence, section 20 which makes the law out and out compulsory is inconsistent with all other sections as has been pointed by previous speakers—the inconsistency is palpable. It is also very unfair and unjust to the ceditor if we allow 10 years' time for the execution of the decree. Ten years is a pretty long time. The authority of the Civil Court has already been curtailed by some provisions of this Bill. I do not object to that, but if you allow section 20 to remain, then the decrees of Civil Courts will be a dead letter for all practical purposes. The provisions of this Bill are professed to be of a temporary nature, but I confess I do not understand what is meant by temporary. If it is found that section 20 is not absolutely necessary, then why do you give a long life of 10 years? In the circumstances, I respectfully submit that the Hon'ble Member in charge will accept the proposal for the deletion of the clause.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, before I give any reasons in justification of the provision in clause 20, I would like to deal with some of the points that have been raised by the various speakers in favour of the omission of clause 20. The most gratifying feature of the debate is to find Mr. S. M. Bose having recourse to the much-abused Central Provinces and the Punjab Acts. Evidently he

could not support this motion without the help of these two Acts; and he and some other speakers who spoke in that strain seemed to think that they had scored a point by pointing out the absence of any such provision from the Central Provinces and the Punjab Acts; but they forget that the Central Provinces Act was the first of its kind in the whole of India, and it was an experimental measure. Then the Punjab followed making certain improvements on it in the light of the experience gained in the working of the Central Provinces Act. And now Bengal has followed the Punjab with further improvements in its Bill in the light of the experience gained in the working of the Central Provinces and the Punjab Acts. So, Sir, it is merely a process of evolution, trying to perfect a machinery for the amicable settlement of debts. And we have provided certain clauses which though not going to the length of compulsion, yet at the same time achieve the object, viz., the amicable settlement of debt between a debtor and a creditor. So, it is useless to put forward as a valid ground for opposing this clause that it is not in the Central Provinces and the Punjab Acts. (MR. P. BANERJI: That argument does not stand.) Sir, may I appeal to you that, I am addressing the House. The hon'ble member had had his chance, and I expect that Mr. Banerji will not interrupt me now. The important point in this connection is that it is a process of evolution as far as this Bill is concerned. Our section 19 you will find in a mild form in the Central Provinces Act, but it is in an improved form in the Punjab Act, and we have copied our section 19 from the Punjab Act and added on to it section 20. And if there is any other province that comes with a Bill of this kind a year or two after, it will profit by our experience in Bengal, and may have other more stringent clauses added in their Bills.

Sir, let me refer to another very important point raised by Mr. S. M. Bose, viz., that the Board of Economic Inquiry in their report made no such recommendation as is contained in this clause; but if he will only look to clause 14 of the Bill of the Board of Economic Inquiry, he will find that that clause is far more drastic than anything contemplated in this Bill or contemplated in clause 20 or any other clause of the Bill. In clause 14—I may just read out the relevant portion— we find—

"If for any reason no settlement is made under section 12, but the Board is of opinion that the debtor or any of the creditors has made a fair offer, it may frame an award covering all the debts of such debtor following the principles of fair offers made by certain creditors as regards the dues of the remaining creditors."

Therefore, if there has been a fair offer from a creditor—and failing a creditor, a fair offer from a debtor—and the Board is of opinion that a debtor has made a fair offer—they can settle practically compulsorily debts of all kinds according to the scheme provided for by the Board of Economic Inquiry, that is to say, they can compulsorily

settle all the debts of all the creditors. I need not here go into the composition of that Board. I need say only this much that it was a very representative and responsible body. (MR. SHANTI SHEKHARESWAR RAY: Question, Question.)

Now, Sir, there is one other point to which I shall refer, and in regard to which I must say that even a person like my friend Mr. J. N. Basu has been misled by his able lieutenant Mr. S. M. Bose. It has been suggested that in regard to clause 20 it is possible that even in the case of a person whose application has been dismissed on the ground of fraud or dishonesty, an order may be passed under section 20 giving a certificate extending over a period of 10 years. The members who have made this point forget that instead of passing any other order which the Board is competent to pass, once it passes an order of dismissal, it is an order of dismissal by the Board. Therefore, it is wrong to suggest—and I do not think that it can be suggested—that you can grant a certificate even in cases when an application has been dismissed on the ground of dishonesty or fraud.

Now, Sir, the only really valid point, if I may say so, was raised by Babu Satish Chandra Ray Chowdhury. He enquired, if Government claimed that the Chandpur experiment was a success, why do Government ask for such drastic powers? If we can compose debts by means of the Chandpur experiment, why go in for a clause like 20? I think, Sir, Dr. Naresh Chandra Sen Gupta met that point by saying that it was possible to get a large number of settlements by means of amicable arrangements; but if there is no such clause as clause 20, then a certain number of cases have perforce got to be left out. We want to try and get amicable settlements and reduction of all debts. We should not be satisfied with a situation by which some people can be penalised because there is a particular creditor insisting on his pound of flesh and is not making or is not prepared to make any concession whatsoever. Therefore, Sir, clause 20 has been put there just as a safeguard against that.

Now, Sir, I shall come to the justification for this clause. What is the real justification for this clause? The real justification for this clause lies in the fact that we have come to the conclusion—deliberately and definitely—that in the interest of the people of this province and all its inhabitants, it is necessary to scale down the debts of the agriculturists of Bengal. If this House accepts the principle that the economic condition of the country is such that owing to the world-wide economic depression the condition of the people of the province has become such that we have got to reduce, or scale down, the debts of the people by amicable arrangement, or in any other way, then the question arises as to the best way in which we can give effect to that and the methods we are to employ in carrying it out into effect. I may now, Sir, refer the House to the statements of persons who have during the last three or four years

considered the serious economic condition of the province brought about by the world-wide economic depression, of persons who have spent a considerable time and thought as to how the situation might best be met. What can be done to meet this unprecedented situation? What can be done to improve the purchasing power of the *raiyat*? What is the conclusion which they have come to? They have come to this conclusion that one of the most important things to be done is to reduce the burden of indebtedness from the shoulders of the peasants of Bengal. That is the considered opinion of people who have spent their time and thought over this question. Therefore, Government decided in their minds that this is the step which has got to be taken. We have got to set about to achieve our object, and that is why this machinery has been provided in clause 20. And, Sir, what does clause 20 say? Clause 20 says that if any creditor or creditors refuse to accept what is considered by the Board and ultimately by the appellate officer to be a fair offer for the settlement of a debt, then and then only he is going to be penalised in the manner provided by clause 20. Now, Sir, no one will claim that the detention of a particular person in prison is a good thing; nor that the imposition of a fine is a good thing; but those things are provided because those persons have not conformed to what was expected of them or have done something which they should not have done. In this case, Government expect that the creditor would accept a reasonable offer for the reduction of a debt, and only in the case of a failure to do so on his part will a man be penalised under clause 20. So, Sir, I do not see why anybody should hold up his hands in horror over this matter. It is not as if everyone has got to wait for his debts for ten years. It is not a *moratorium*, and it is wrong to suggest that. It is only a creditor who deliberately chooses to have this clause applied against him by not accepting a fair offer, who will be affected by this clause. Therefore, I claim that there is no hardship. If this clause is operated against anybody, it is only against that man who courts it willingly and knowingly. It is always open to him to accept a fair and reasonable offer.

Now, Sir, some members have remarked on the composition of the Boards and have said that these Boards may consider an offer as fair which is actually not so. I quite admit the possibility of that—that a Board may be prejudiced against a particularly hard-hearted and determined creditor and act in the way apprehended. But there is always an appellate officer who will have time to consider this question dispassionately, disinterestedly, and, if I may say so, impartially, and there is no reason to suppose that the appellate officer will deliberately and intentionally certify an unfair offer as a fair offer and allow clause 20 to operate against a particular creditor. Therefore, Sir, I maintain that there is no possibility of hardship on any creditor. It is merely there, as Mr. Majid Baksh put it very well, to act as a safeguard and to induce people to come forward. Let us now look at the

reverse side of the shield. Supposing clause 20 is not there and supposing the creditors combine and deliberately refuse to accept any offer whatsoever, neither clause 19 can operate nor any relief can be given. You make the Bill absolutely useless, a mere scrap of paper, if we take away clause 20 from it. (MR. S. M. BOSE: Punjab.) In the light of experience I say again that as this practical difficulty has been felt both in the Punjab and in the Central Provinces and the Central Provinces report shows that there has been this practical difficulty felt, we have felt the necessity of a clause like this. In view of the public opinion expressed that there is this possibility, which you cannot ignore, of creditors combining, section 19 can be made useless and absolutely infructuous and the whole Bill will be a mere scrap of paper if clause 20 is taken away from it. It is there merely as a safeguard, and I do not think it is right to argue that the safeguard will become the general practice. Therefore, I very strongly oppose this amendment.

Mr. Sarat Kumar Roy's motion being put, a division was taken with the following result:—

AYES.

Banerji, Mr. P.
Basu, Babu Jatindra Nath.
Bose, Mr. S. M.
Chaudhuri, Dr. Jagendra Chandra.
Chaudhuri, Babu Kishori Mohan.
Das, Rai Bahadur Satyendra Kumar.
Dutt, Rai Bahadur Dr. Haridhan.
Mittra, Babu Sarat Chandra.
Mukhopadhaya, Rai Sahib Sarat Chandra.
Ray, Babu Khetter Mohan.
Ray Chowdhury, Babu Satish Chandra.
Roat, Babu Hoseni.
Ray, Mr. Salleswar Singh.
Ray, Mr. Sarat Kumar.
Sahana, Rai Bahadur Satya Kinkar.
Singh, Srijut Taj Bahadur.

NOES.

Ahmed, Khan Bahadur Maulvi Emaduddin.
Baksh, Maulvi Syed Majid.
Bal, Babu Lalit Kumar.
Barma, Babu Premhari.
Basu, Mr. S.
Chakrabutty, Babu Nihar Chandra.
Chanda, Mr. Aparva Kumar.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, Maulvi Syed Osman Haider.
Chowdhury, Maulvi Abdul Ghani.
Chowdhury, Haji Badi Ahmed.
Das, Babu Guruprasad.
Dunlop, Mr. R. W. B.
Faroqui, the Hon'ble Nawab K. B. M., of Ratanpur.
Fazlullah, Maulvi Muhammad.
Ferguson, Mr. R. H.
Gilchrist, Mr. R. R.
Gladding, Mr. D.
Graham, Mr. H.
Hakim, Maulvi Abdul.
Haldar, Mr. S. K.
Haque, the Hon'ble Khan Bahadur M. Azizul.
Hogg, Mr. G. P.
Hooper, Mr. G. G.
Hoque, Kazi Emdadul.
Hossain, Nawab Musharruf, Khan Bahadur.
Hossain, Maulvi Muhammad.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Maulvi Abi Abdulla.
Khan, Maulvi Tamizuddin.
Lesson, Mr. B. W.
Malti, Mr. R.
Martin, Mr. O. M.
Mitter, Mr. S. C.
Mitter, the Hon'ble Sir Brojendra Lal.
Nandy, Maharaja Sris Chandra, of Kasimbazar.
Nazimuddin, the Hon'ble Khwaja Sir.
Porter, Mr. A. E.
Quasem, Maulvi Abul.
Rahsem, Mr. A.
Rahman, Khan Bahadur A. F. M. Abdur-.
Rahman, Maulvi Azizur.
Ray, Babu Amulyadhan.
Ray, Babu Nagendra Narayan.
Ray Chowdhury, Mr. K. C.
Reid, the Hon'ble Mr. R. N.
Ross, Mr. J. B.
Roxburgh, Mr. T. J. Y.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy Choudhuri, Babu Nem Chandra.

Sarbee, Mr. F. A.
Samad, Maulvi Abdus.
Shah, Maulvi Abdul Hamid.
Singha, Babu Kshetra Nath.
Sinha, Raja Bahadur Bhupendra Narayan, of Nashipur.
Sohrawardy, Maulvi Muhammad.
Stevens, Mr. H. S. E.
Townend, Mr. H. P. V.
Woodhead, the Hon'ble Sir John.
Wordsworth, Mr. W. C.

The Ayes being 16 and the Noes 60, the motion was lost.

Babu SATISH CHANDRA RAY CHOWDHURY: I beg to move that in clause 20, 1st paragraph, line 2, after the words "by the debtor," the words, figures, brackets and letter "under circumstances mentioned in clause (*b*) of sub-section (*1*) of section 19 and" be inserted.

Sir, I move this motion with the brief observation that the section might stand along with 19, and not independently. I have heard the arguments of the Hon'ble Member and I do not for a moment doubt the earnestness of the Hon'ble Member to see the Bill working. In order to have the Bill working it is also necessary that the people should have confidence in the Board and they should have the assurance that the section as it stands will not cause any injustice. Experiment ought to be made for a time with section 19 before applying the drastic provisions of section 20. If it be found that 40 per cent. of the creditors are not coming forward, then the remedy laid down in section 20 may be resorted to. The Hon'ble Member has said that unless we have this section, 40 per cent. will not come forward. I think 40 per cent. will come forward in every case in which the debtor is heavily involved, because the creditors will naturally try to have their debts settled as soon as possible. If you constitute such Boards which command the confidence of the people, there is no reason why any number of creditors will not come forward. That apprehension that if we leave out clause 20 no creditor will come forward to compose his debts is quite groundless. The creditors to whom so much wickedness is ascribed are at the present time particularly anxious to have their debts settled even by small instalments. As a matter of fact, the question of indebtedness does not loom so large in this country. I am sure that if this amendment is accepted, the Hon'ble Member will get considerable support and the measure which he has introduced in this Council for the purpose of relieving an important section of the people will be worked successfully. With these words, I place my amendment before the House.

Mr. S. M. BOSE: I support this amendment. In clause 20 it is said: subject to any rules made under this Act, if any debtor does not accept an offer made by the debtor which in the opinion of the Board is fair and such as the creditor ought reasonably to accept, etc. There is nothing said in it that clause 20 comes in only when clause 19 fails. I understand from the speech of the Hon'ble Member that clause 20 is our last resort in case the creditors will not be induced to see reason as reason is seen by the Board; in that case they are to be punished under clause 20. But the real point, so far as I could make out, is, should creditors fail to agree, then is clause 20 to be applied? As Mr. Ray

Chowdhury has said, if clause 19 fails, then and then only should clause 20 come in. As clause 20 now stands, it is open to the Board to apply it irrespective of clause 19. I submit that clause 20 is a drastic compulsory clause and it should only be brought in should the gentle compulsion under clause 19 fail.

The Hon'ble Khwaja Sir NAZIMUDDIN: I rise to oppose this amendment. The proposal is, Sir, very undesirable for the reason that apart from the fact that clause 19 (*1*) (*b*) presupposes agreement there is also the fact that in Bengal there is mostly one creditor, and once you have got one creditor who refuses, the question of clause 19 (*1*) (*b*) does not arise. After all there is no necessity to tack clause 19 on to clause 20. Therefore, I oppose it.

The amendment was put and lost.

Maulvi ABDUL HAKIM: I beg to move that in clause 20, second paragraph, line 6, for the word "six" the word "three" be substituted.

On a thorough perusal of this Bill, it appears that in a majority of cases settlement of debts will not be rendered practicable under section 19 as this settlement depends upon the will of the creditor and if it is also considered unwise to make the millions of debtors insolvent under section 21 and thereby deprive them from the greater portion of their lands, then in my opinion relief should be given and may easily be given to the helpless debtors independently by the Debt Conciliation Boards by bringing section 20 into operation without delay all over the province. It is stated in this section that if a creditor does not accept a fair offer made by a debtor in respect of any of his debts, then the Debt Conciliation Board may grant to the debtor a certificate in the prescribed form in respect of the debt to which the offer relates, to the effect that the creditor shall not be able to execute any decree for the recovery of such debt until the expiry of such period not exceeding 10 years. This is, indeed, a great advantage on the part of the debtor in these days of dire economic crisis, and practically it might serve as a *moratorium* for the poor and helpless debtors, if no interest could run during this period. But because absolute non-payment of interest during this period cannot even be imagined under a system of Government that is going on in this country, it would have been greatly beneficial in the interests of the poor and helpless agricultural debtors, if at least the rate of interest provided for in this clause would come down to 3 per cent. per annum. And if the rate of interest is reduced to Rs. 3, it would also rank with the rate of interest on Government loans as now reduced by the Central Government because of the economic calamity that has befallen this country and the enormity of this calamity, as you all know, is greater in this unfortunate country than the United Provinces, the Punjab or any other country whatsoever. I have already stated in my speech delivered a few days before that the great majority of cultivators of this country are groaning under a load

of debt which is heavier here than anywhere else in the world. The rate of fall in the price of their agricultural produce is more rapid than the rate of fall in the price of manufactured articles. They are practically a race of starving people. In fact, they exist rather than live and the margin between their starvation and existence is very small. In fact, the agricultural debtors of this province deserve a complete *moratorium* in respect of their debts for a number of years, if no other greater remedy can be given to them. When the condition of the helpless cultivators is such as I have mentioned, who can deny that the wretched cultivators of Bengal shall not be able to pay the interest at the rate of 6 per cent. per annum as provided for in clause 20 of this Bill? If Government condescend to accept my proposal which is a very modest and fair one, then and then only, Government would be able to give substantial relief to the helpless agricultural people. When interest on Government loan has come down to 3 per cent. and the interest on saving banks deposit also have come down to Rs. 2½ at this time, I am surprised to think how the framer of this Bill has made the provision for 6 per cent. interest in this Bill under discussion. Sir, the usurious money-lenders have already realised huge amounts of interest during the past ages from the simple and illiterate agricultural people of this country. I may draw the particular attention of this House that when, since the year 1905, the price of jute was regularly on the increase for a period of 30 years, these usurious money-lenders have already realised a huge amount of interest no less than seven times their principal amounts. In view of this fact and specially when the Central Government themselves have reduced the rate of interest on their own loans to 3 per cent., it would be most cruel and unwise on the part of our Local Government to recommend 6 per cent. interest as set forth in the clause under discussion. And the representatives of people sitting in this House would be miserably failing in their duty if they vote for 6 per cent. interest instead of 3 per cent. as proposed by my amendment. "Mankind is but one nation" should be the guiding principle of every Government in every country and "live and let live" should be the main policy of our Government now, when the vast majority of agricultural people are hopelessly indebted and are starving. Have the Government ever thought what the condition of the cultivators of Bengal would be after a few months in this year? I assert on the floor of this House that there was severe drought this year at the time of last transplantation season and also in the month of *Kartic* and owing to this drought there has been a miserable underproduction of the *aman* paddy this year, and it is sure if Burma rice is not requisitioned since the month of *Baisakh*, the cultivators of Bengal will not be able to save their lives this year. I, therefore, humbly say that instead of providing for this high rate of interest at this time of dire economic crisis, Government should recommend a rate of interest which the helpless and starving cultivators will be anyhow able to bear.

Sir, if I am to speak the minds of the usurious money-lenders of our country, I can say that almost 99 per cent. of these money-lenders already gave up all hopes of recovering their debts due to them from the cultivators inasmuch as even the majority of their mortgaged lands have already been sold in auction for arrears of rents and the remaining mortgaged lands are going to be daily sold still now. And it is an open truth that most of these usurious money-lenders would have been glad at this time if they could get an assurance from their agricultural debtors to recover their original principal by instalments spread over a number of years.

The European Group would be curious to know that 3 or 4 years before when many money-lenders had not money enough in their hands to bring suits for their bonds the limitation of which were about to expire, they went to the house of their debtors and secretly paid a few rupees in their hands from their own pocket and had an entry of payment made on the back of the document by such debtors in presence of witnesses to save limitation of their bonds. Considering these points, am I not right if I say that this Bill if passed into law is calculated to do good more to the usurious money-lenders than to the helpless agricultural people?

Sir, there is another aspect regarding the working of this Bill. Sections 19, 20, 21, 25, 26, etc., are the most important sections, but at the same time they are so cumbrous and difficult to understand that the village members of the Debt Conciliation Boards will, I am afraid, be unable to conduct the proceedings under these sections with proper efficiency and judgment for want of proper understanding even if they are honest men. Sir, if you measure the section 26, you will find that it is about one cubit in length. There are some other sections almost of this nature. And I think even a good lawyer's head may be puzzled by such difficult sections. Besides this, a Board conducting proceedings under this Act must have a fair knowledge of certain provisions of the Public Demands Recovery Act, Bengal Tenancy Act, the Transfer of Property Act, etc. And I do not think that a Board composed of members picked out from village people and not having any knowledge in law shall be able to do justice under those difficult sections. In that case if the Boards take up this easier section, I mean section 20 of this Bill, I think the Debt Conciliation Boards would be able to do greater justice to the debtors than doing things unwisely and perfunctorily under the aforesaid difficult sections of this Act.

Mr. PRESIDENT: Order, order. The Council stands adjourned till 11 a.m. to-morrow.

Adjournment.

The Council then adjourned till 11 a.m. on **Tuesday, the 10th December, 1935, at the Council House, Calcutta.**

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Tuesday, the 10th December, 1935, at 11 a.m.

Present:

Mr. Deputy President (Mr. REZAUR RAHMAN KHAN) in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers and 84 nominated and elected members.

STARRED QUESTIONS

(to which oral answers were given)

Text Book Committee.

*15. **Rai Bahadur SATYENDRA KUMAR DAS:** (*a*) Will the Hon'ble Minister in charge of the Education Department be pleased to state—

(*i*) on what principles members are selected on the Text Book Committee; and

(*ii*) on what principles publications are approved by the Text Book Committee?

(*b*) Is the Hon'ble Minister aware that there has been a feeling of dissatisfaction among a large section of the public with the manner in which the Text Book Committee has been making selections of publications?

(*c*) Are the Government considering the desirability of setting up an agency to review the decisions of the Text Book Committee and advise the Hon'ble Minister as to the merits and demerits of all publications submitted for approval?

Mr. H. GRAHAM: (*a*)(*i*) In accordance with the rules prescribed by Government for the working of the Text Book Committee and in consideration of their suitability for the work.

(*ii*) Publications are approved on their merits.

(*b*) and (*c*) No.

Maulvi SYED MAJID BAKSH: With reference to answer (*a*)(*i*), will the Secretary of the Education Department be pleased to explain the nature of the rules prescribed by Government for the working of the Text Book Committee?

Mr. H. GRAHAM: The rules are published, and are in every one's hands, Sir.

Maulvi SYED MAJID BAKSH: Is there any minimum qualification of any description prescribed for text books?

Mr. H. GRAHAM: They are examined on their merits by people who are competent to judge them.

Mr. SHANTI SHEKHARESWAR RAY: Will the Secretary of the Education Department be pleased to state whether these appointments are made in consultation with the University authorities?

Mr. H. GRAHAM: No, Sir.

Mr. SHANTI SHEKHARESWAR RAY: Will the Secretary of the Education Department be pleased to state whether these appointments are made in consultation with the heads of the different educational institutions in the province?

Mr. H. GRAHAM: No, Sir.

Mr. SHANTI SHEKHARESWAR RAY: What is the criterion for selection of members of the Committee?

Mr. H. GRAHAM: The Director of Public Instruction, Sir, selects men of standing in educational matters whose qualifications are apparent.

Irrigation from Damodar, Eden and Bakreswar canals.

***16. Rai Bahadur SATYA KINKAR SAHANA:** (*a*) Will the Hon'ble Member in charge of the Irrigation Department be pleased to lay a statement on the table showing—

(*i*) the announced acreage of irrigation, respectively, from the Damodar, the Eden and the Bakreswar canals;

(*ii*) the acreage actually irrigated from each of the three canals during the month of October, 1935; and

(*iii*) the acreage that the Irrigation Department expect to irrigate from those three canals, respectively, for the cultivation of the winter crop?

(*b*) Is the Hon'ble Member aware that there is a feeling in the country that during the last Damodar flood the obstruction caused by the brickwork across the Damodar river near Rondiha aggravated the situation?

(*c*) Is the Hon'ble Member considering the desirability of making necessary enquiries and, if necessary, of taking steps to prevent future calamities?

Mr. H. S. E. STEVENS: (*a*)—

		Acres.
(*i*) Damodar Canal	...	143,000
Eden Canal	...	37,000
Bakreswar Canal	...	10,000
(*ii*) Damodar Canal	...	140,324
Eden Canal	...	13,289
Bakreswar Canal	...	6,379

(*iii*) Since the rivers are dry no winter irrigation can be expected.

(*b*) No.

(*c*) The weir across the river Damodar did not aggravate the situation and hence no enquiry is necessary.

Political (Terrorist) prisoners and religious instruction.

*17. **Babu KISHORI MOHAN CHAUDHURI:** (*a*) Will the Hon'ble Member in charge of the Political (Jails) Department be pleased to state—

(*i*) whether it is a fact that the Government have made arrangements for the religious teaching of ordinary Hindu convicts inside the jails as in the Rajshahi Central Jail; and

(*ii*) whether it is a fact that the Hindu political (terrorist) prisoners are not allowed to participate in those religious teachings?

(*b*) If the answer to (*a*)(*ii*) is in the affirmative, are the Government contemplating necessary arrangement for the religious teachings of the political convicts?

MEMBER in charge of POLITICAL (JAILS) DEPARTMENT (the Hon'ble Mr. R. N. Reid): (*a*)(*i*) Yes.

(*ii*) Terrorist prisoners are not allowed to associate with others, but there is no bar to their receiving religious instruction separately.

(*b*) Does not arise.

Mr. SHANTI SHEKHARESWAR RAY: Will the Hon'ble Member be pleased to state from whom are these terrorist prisoners to receive religious instruction?

The Hon'ble Mr. R. N. REID: From the religious instructors attached to the particular jails in which they are confined, Sir.

Mr. SHANTI SHEKHARESWAR RAY: Is there any arrangement for giving religious instruction separately to these terrorist prisoners?

The Hon'ble Mr. R. N. REID: As I have said in the answer to the question, there is no bar to their receiving religious instruction separately, and the implication is that such arrangement exists.

Pension to process-servers.

*18. **Babu KISHORI MOHAN CHAUDHURI:** Will the Hon'ble Member in charge of the Judicial Department be pleased to state whether the Government are considering the desirability of taking immediate steps to give effect to the revised scheme of granting pension to the process-servers as admitted by the Secretary to the Judicial Department in his speech on the floor of this House on the 29th July, 1931?

MEMBER in charge of JUDICIAL DEPARTMENT (the Hon'ble Sir Brojendra Lal Mitter): Financial stringency has delayed, and must continue to delay, the introduction of any improvement in the pensionary terms of process-servers.

Posting of the military in rural areas of Noakhali.

*19. **Maulvi MUHAMMAD FAZLULLAH:** (*a*) Will the Hon'ble Member in charge of the Political Department be pleased to lay on the table a statement showing for the last 12 months the number of persons (detained without trial) in Bengal—

(*i*) who were released unconditionally;

(*ii*) who were released on condition; and

(*iii*) who were released on grounds of health?

(*b*) Will the Hon'ble Member be pleased to lay on the table another statement showing—

(*i*) the number of restraint orders passed under the Bengal Criminal Law Amendment Act by the District Magistrate upon students of various educational institutions of Noakhali since the declaration of the district as an emergency area;

(*ii*) how many of such orders have been cancelled up-to-date;

(*iii*) the grounds on which they were cancelled; and

(*iv*) how many of the students were under 14 years of age?

(*c*) Will the Hon'ble Member be pleased to lay on the table another statement showing since Noakhali was declared an emergency area—

(*i*) how many firearms were seized;

(*ii*) how many terrorist outsiders were arrested in this district;

(*iii*) the result achieved by the posting of the military in rural areas of Noakhali; and

(*iv*) what was the cost incurred in the maintenance of the military in rural areas?

The Hon'ble Mr. R. N. REID: (*a*)(*i*) 61: of these 38 were only under restrictions and 2 were externees.

(*ii*) 155.

(*iii*) 2.

(*b*)(*i*) 32.

(*ii*) 24.

(*iii*) As being no longer necessary.

(*iv*) 1.

(*c*) (*i*) and (*ii*) Nil.

(*iii*) Satisfactory.

(*iv*) Rs. 244-6-3.

UNSTARRED QUESTIONS

(answers to which were laid on the table)

Pension to process-servers.

4-5. Maulvi ABDUL HAMID SHAH and Mr. P. N. GUHA: (*a*) Is the Hon'ble Member in charge of the Judicial Department aware that the Hon'ble Sir James Grigg stated in reply to a question in the Legislative Assembly on the 24th September last that the matter of granting pension to all inferior employees under the Central Government on the revised rules will be decided during the current financial year?

(*b*) If the answer to (*a*) is in the affirmative, is the Hon'ble Member considering the desirability of giving effect in Bengal to the revised rules of granting pension to the inferior Government servants including the process-servers (as admitted by the Secretary of the Judicial

Department in his speech on the floor of this House on the 29th July, 1931)?

The Hon'ble Sir BROJENDRA LAL MITTER: (*a*) The Hon'ble Sir James Grigg stated that the Government of India had formulated a scheme for improving the pensionary conditions of inferior servants under the Central Government and that it was hoped that final orders would be issued in the course of 1935-36.

(*b*) Financial stringency has delayed, and must continue to delay, the introduction of any improvement in the pensionary terms of inferior Government servants including process-servers in Bengal.

Maulvi ABDUL HAMID SHAH: With reference to answer (*b*), will the Hon'ble Member be pleased to say how many years more will be taken by Government to introduce the improvement?

The Hon'ble Sir BROJENDRA LAL MITTER: No one can say, Sir.

Piece-workers of the Bengal Government Press.

8. Maulvi LATAFAT HUSSAIN: (*a*) Will the Hon'ble Member in charge of the Finance Department be pleased to state—

(*i*) whether it is a fact that the salaried employees of the Bengal Government Press get regular yearly increment; and

(*ii*) whether it is a fact that piece-hand employees on the other hand do not get increment?

(*b*) Is the Hon'ble Member aware that in paragraph 10 of their report the Piece-Workers' Committee, 1926, recommended that the grade rate for hour-work should be actually adjusted to the average rates drawn for piece-works during regular hours by raising the maximum rates?

(*c*) If the answers to (*a*) and (*b*) are in the affirmative, will the Hon'ble Member be pleased to state the reasons for not giving increments to the piece-workers?

MEMBER in charge of FINANCE DEPARTMENT (the Hon'ble Sir John Woodhead): (*a*) (*i*) The salaried employees being on time-scales of pay get increments at regular intervals.

(*ii*) The piece-workers, not being on time-scale of pay, do not get such increments.

(*b*) Yes.

(*c*) Because an incremental scale is inconsistent with a piece-rate system.

GOVERNMENT BUSINESS

LEGISLATIVE BUSINESS

GOVERNMENT BILLS.

The Bengal Agricultural Debtors Bill, 1935.

(The debate on the Bill was resumed.)

Maulvi ABDUL HAKIM: I may refer to a very important point in connection with this Bill. The Select Committee was good enough to insert a good provision in clause 25, sub-clause (3). The clause provided that if the certificate officer fails to recover the full amount of any award, he shall, if required, sell such portion of the immovable property of the debtor as will be sufficient to pay the whole amount payable under the award. But to our utter regret the Hon'ble Member in charge now wants to omit that provision from that section and has put in an amendment to insert such a dangerous provision that the whole immovable property too may be sold in auction by the certificate officer in case a debtor cannot pay one or two instalments for an unavoidable cause. Such is the danger to which the poor agriculturists may be subjected under this Act.

Sir, there is another point to be considered regarding the formation of the Debt Conciliatory Boards under this Act. If the Boards are composed of money-lenders and landlords and their well-wishers and if the appellate officers too who will most probably be picked out from amongst our countrymen are of the same type, then the debtors will be ruined in their hands.

Mr. SHANTI SHEKHARESWAR RAY: On a point of order, Sir. Are we discussing the question of reducing the interest to 3 per cent. or something else?

Mr. DEPUTY PRESIDENT: Mr. Hakim, you must come to the point under discussion instead of dealing with the question as a whole.

Maulvi ABDUL HAKIM: In that case the provisions which are favourable to the money-lenders and landlords will be largely applied by them upon the debtors as a result of which all the lands of the debtors will go into the possession of money-lenders and landlords and the whole class of debtors will be reduced to landless beggars and labourers. And this state of affairs is sure to bring chaos in the whole province. We can very well surmise this state of affairs from the undesirable state of affairs in most of the union boards, local boards and district boards all over the province. Of all the sections of this

Bill, section 20 is, I think, the most useful section and is very easy too. And if for some reason or other the debtors are not benefited by most of the Boards and appellate officers, I think Government should direct the Debt Conciliatory Boards to give relief to the debtors in most cases under section 20 of this Act. And subject to my amendment the debtors also may get sufficient advantage under this Act to try their fate once more if better days dawn upon us in the near future without going through any chaos or disorder and without causing any real loss to the creditors. On the grounds stated above I earnestly appeal both to Government as well as to the members of this House to accept my amendment and reduce the rate of interest according to my amendment. With these words, Sir, I move.

Maulvi SYED MAJID BAKSH: Sir, I beg to give my whole-hearted support to this amendment, and there is nothing in it which should take one by surprise or which is such as would make one to lose his balance of mind. In the first place, Sir, we are not disturbing any contractual relations. If a debtor has contracted a certain rate of interest with his creditors, and if by any enactment it was sought to be reduced, then of course one could have raised the argument that we were disturbing the contractual relations. Here what we are concerned with is the decision given by a Board, and in doing so, the Board need not see what the contractual rates were and what it ought to be. All that the Board is concerned with is that the creditor is given an interest which, according to the market rate, is not very low, or which, according to the rate of interest prevailing elsewhere, is not lower than what he may otherwise have. Every one knows that even in India, the rate of interest has come down. Interest on Government securities has come down to 3 or 3½ per cent. In England, it is still lower, but we are not living under conditions similar to those prevailing in England at present. But even nearer home, we find that Government loans are being subscribed promptly at such low rate of interest as 3 or 3½ per cent. In that case even, we find that people, having money deposited in banks at a much higher rate of interest, are eager to subscribe to Government loans at a lower rate of interest, because they want to be sure to have some return of the money invested. Moreover, Sir, if we must have a safeguard at all, it must be a drastic one; otherwise, it is sure to become a dangerous thing. If it is contended that by making the interest 6 per cent., we would enforce the creditors to come to an amicable settlement under section 19, I say, Sir, the argument will still hold good that by making the interest 3 per cent., the provision will be more effective in bringing about a compromise.

Sir, Mr. P. Banerji was saying that I could as well support abolition of interest. Yesterday, he said that because the Hindus were taking interest, and because I am a Muslim, therefore, according to the injunctions of the Quoran, I should not support interest.

Mr. DEPUTY PRESIDENT: Mr. Majid Baksh, you must restrict yourself to the question under issue.

Maulvi SYED MAJID BAKSH: Sir, I am supporting the motion but as that matter has been raised——

Mr. P. BANERJI: But you cannot defend yourself when you are actually supporting payment of interest.

Maulvi SYED MAJID BAKSH: Sir, I am only defending myself as best as I can in the circumstances. Sir, this is not the first time that my friends find out that interest has been looked down upon by all civilised people. My friends may know that even Aristotle prohibited taking interest, and it cannot be said that because the Quoran prohibits taking of interest, therefore, everybody should prohibit it.

Mr. DEPUTY PRESIDENT: Mr. Majid Baksh, I have repeatedly said that you must confine yourself to the question now under discussion and not refer to such unpleasant things.

Maulvi SYED MAJID BAKSH: Yes, Sir. The question is to reduce the rate of interest from 6 per cent. to 3 per cent. I presume, Sir, that my friends' knowledge of Hinduism is very vague and meagre, because we find in the Manusmriti, "বিষ্ঠা বার্দ্ধুষিকান্ন" which means that if a man is addicted to usury and takes interest, his food is excreta," and if Manu is not a book of Hindu religion, I do not know what is——

Mr. S. M. BOSE: Is the member in order in attacking the Hindus generally?

Maulvi SYED MAJID BAKSH: You are not a Hindu, and you have nothing to say against me.

Mr. DEPUTY PRESIDENT: Mr. Majid Baksh, you must address the Chair, and I must ask you once more to be careful to confine yourself or to the subject under discussion.

Maulvi SYED MAJID BAKSH: Sir, in order to make the clause more effective, we should press our point here. It must be known, Sir, that a creditor, by the time he goes before a Board, must have realised a very large portion of his dues over and above the principal sum, and if after realising that, the Board gives a fair offer, and he refuses that, the provisions of this clause is not certainly very unfair.

Considering also the fact that this clause will have a very rare application, I say that this tightening of screws is a wholesome provision and I, therefore, support it.

Mr. S. M. BOSE: Mr. Majid Baksh has just stated that there will be no interference with the sanctity of contract at all, because a Board is given the power to award a decree. Nothing of the kind, Sir, as the Board is not passing a decree, but a court is. It is quite wrong. Further, he and the mover has said that Government loans could be subscribed for at 3 or 3½ or 1 or ½ per cent., so why should not the interest here be 3 per cent.? Of all the arguments one has ever heard, this is the most absurd. As we all know, and as the mover and the supporter of this amendment know, in a Government loan, there is the security of Government behind it, and that at any time you can have your money back, while in this case, there is nothing of the kind. In an award, the debts are scaled down; it is a paper decree which may be paid or not; there is no guarantee at all; to compare an amount payable under an award with that on a Government loan is sheer absurdity, and I am amazed to find that intelligent men have been advancing that futile argument. Mr. Majid Baksh has said that clause 20 will be very rarely used, and that only as a last resort. I do not know from where he got that assurance. The amendment of Mr. Satish Chandra Ray Chowdhury that when there is a failure to apply the provisions of section 19, in that case only will section 20 be applied, was rejected by Government. Therefore, his statement that clause 20 will be applied as a last resort, has no foundation at all. Then, Sir, Maulvi Abdul Hakim has at last said that the Board may have difficulty to understand the provisions contained in the Bill. I quite agree, and here at the last moment we have a supporter to our point of view that the Chairman of the Board should be a judicial officer with experience of civil law.

Mr. SARAT KUMAR ROY: Sir, Maulvi Abdul Hakim's speech in support of his resolution reminds me of a story current in Bengal. Once upon a time four friends were talking of each other's experience in buying sweetmeat from a certain vendor. The first said that he had bought one seer of sweetmeat for a rupee. The second said, "well brothers, the sweetmeat-vendor gave me only half a seer for a rupee." The third said, "you got at least some thing in return for your money but I was given nothing for my money." The fourth then said, "brothers, you are all in a far better position than myself any way, for, in return of the rupee I gave, the shop-keeper gave me a smart slap on my cheek and sent me away." Sir, I think the Maulvi Sahib proposes to treat the creditors in the same way as the vendor did, if the creditor has the audacity to ask his debtor for repayment. Sir, I oppose the amendment.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I rise to oppose this amendment, as I do not consider it to be reasonable and fair. To begin with, the interest that has been put there is the maximum. It does not say that 6 per cent. must be given. That is one point, Sir. The second point is that the amendment suggests that the interest should be 3 per cent., which will be even less than what is now available on Government securities. There is no justification whatsoever for that. Any body who wants to invest money can do so in Government securities at 3½ per cent. Therefore, to suggest that the interest should be 3 per cent. is unfair, and there can be no justification whatsoever for it. In view of these reasons, Sir, I oppose the amendment.

The amendment was put and lost.

Mr. SARAT KUMAR ROY: Sir, I rise to move that in clause 20, second paragraph, in lines 8 to 14, the following be omitted, namely:—

"and no decree for the recovery of such debt shall be executed until all amounts payable in respect of other debts of the debtor under an award have been paid, or such award has ceased to subsist under sub-section (*f*), of section 26, or, if there is no award, until the expiry of such period not exceeding ten years as may be specified in the certificate."

My reason for doing so is that if you want to punish a man, you should bear in mind that the penalty ought not to exceed what is absolutely required and so in the present case you should not deprive the creditor perhaps of all his dues entirely.

Sir, if you empower the Board to give a certificate whereunder the creditor will be debarred from realising his dues for a long period, you practically take away his entire rights to recover his dues. I think the situation does not justify the inflicting of such a heavy punishment. Here, Sir, the utmost that can be said against a creditor is that in refusing to accept an offer of settlement by the debtor, he is guilty of insisting upon getting something more that what is offered. Sir, if for such an offence you mean to deprive him of his dues entirely, for a period of ten years, I think the punishment would be out of all proportion with the gravity of the offence. I suggest that the penalty should be a milder one and for that purpose I propose to omit from the second paragraph of this clause 20, those words which are meant for debarring creditors who do not accept their debtor's offer for settlement, from recovering any part of their dues for a period of ten years. The utmost penalty that ought to be inflicted is to deprive them of the costs if they go to the Civil Court and of any excess of interest that they may get a decree for over and above six per cent. per annum. I think that would be rather a fair punishment for enforcing compulsion on the creditor who would not agree to accept reasonable offers from

their debtors. I do not consider that under the circumstances any higher penalty is justifiable.

Babu KHETTER MOHAN RAY: Sir, I beg to support the amendment moved by my friend, Mr. Sarat Kumar Roy. Sir, this is one of the most objectionable features of the Bill. The Hon'ble Member has described this as a sort of light compulsion. If this is light compulsion, I do not know what would be a drastic one in order to compel a creditor to come to terms. There are two other similar Acts, one in the Central Provinces, and the other in the Punjab, but I do not find that there is any such drastic provision in them. I do not know what justification can there be to resort in the first instance to such drastic measures by a Board inexperienced in the matter. In the Central Provinces Act, when a creditor sues in a civil court for the recovery of a debt in respect of which a certificate has been granted under sub-section (*1*), the court shall, notwithstanding the provision in the law, not allow the plaintiff any cost or any interest after the date of such certificate in excess of simple interest at 6 per cent. per annum on the amount standing on the date of such certificate. There is also a similar provision in the Punjab Act. These are the provisions which we find in similar enactments in the Punjab and in the Central Provinces. No facts have been adduced here in justification of the adoption of these drastic measures. These measures take away the right of creditors to execute decrees, and not only that, in a case where an award has been made, he will have to wait for ten long years. In the meantime, Sir, the debtor will have ample opportunity to dispose of his property, and thus defeat the claims of the creditor to realise his dues. This is not only a drastic measure, but it is most arbitrary. This should not have found a place in the Bill, and I, therefore, appeal to the Hon'ble Member to pause and consider whether this drastic measure should be in the Bill, especially as the intention is to have Boards for conciliation of debts and not for cancellation of them.

Mr. H. P. V. TOWNEND: Sir, this subject was in fact discussed yesterday at considerable length. All these arguments were put forward and I think I may say all these arguments were met. I should like to refer to one point in Mr. Ray's speech. He says that this clause goes beyond the Central Provinces provision and the Punjab provision, and, in order to establish his case, he reads out sub-section 15 (*3*) of the Central Provinces Act which does not cover this point and carefully (or inadvertently) omits sub-section 15 (*3*) which exactly covers it.

Mr. Bose yesterday pointed out the difference between the Central Provinces provision and our's. He was quite right in what he said. He pointed out that, although there is provision in the Central Provinces

Act for delaying the execution of a decree, it differs from our Bill in that secured debts are not covered by the Central Provinces' provision which moreover does not apply where there has been no agreement at all. Our provision goes further than that in the Central Provinces' Act but undoubtedly Mr. Khetter Mohan Ray to-day has been guilty of a slip in informing the House that there is nothing like it in the Central Provinces' Act. I think that the same remarks apply to the Punjab Act also. Section 20 of the Punjab Act deals with this matter and sub-section (J) corresponds to the particular clause to which objection is now taken. There are differences between the Punjab provision and our's but that is comparatively a minor matter. The main point is this. It is said by Mr. Bose that this is a penal provision and that, as such, it goes too far. This is not correct. I would point out that it is not because it is a penal provision that it has been inserted in the Bill but because it is necessary for the working of the Act. When an award has been made it will certainly be infructuous if creditors who have not agreed to the settlement are free immediately to sue the debtor and to execute decrees against him. Everything done under the agreements will then become infructuous; so, to protect the debtor when there has been an award, it is necessary to have a clause like this. It is beside the mark to argue that as a penal provision this would be unnecessarily harsh.

Then as regards the case when there is no award, the position will be that a reasonable offer has been made and has been refused. In such a case if the debtor were given some time he might be able to pay off the debt: but certainly if the creditor proceeds to bring a suit at once and to execute a decree the debtor will be unable to pay and his property will have to be sold up completely. We know that; for otherwise the creditor would have accepted the offer. If the offer has been a reasonable one it has been an offer to pay as much as the debtor can pay in a reasonable time without selling off his property. If the debtor is not to be turned off his land in such a case, it is necessary, therefore, to allow him time, and the proposal is to allow time up to a maximum of 10 years—not 10 years in every case—5 years might sometimes be enough, but where 10 years is necessary 10 years would be allowed by the Board.

Then there is another point. Mr. Ray says that it is most unfair that the creditor should have no protection during this time; that he will not be allowed to execute his decree but that the debtor will be free to sell off his property or dispose it off in any way he likes. I do not think there is any reason to suppose that the debtors generally will be dishonest, but in any case why should not clause 32 be applied in such cases and the property be attached? I see no reason why clause 32 should not be applied if the Board thinks that a debtor is likely to be dishonest. If the Board thinks it proper to extend the time to 10 years, they are at perfect liberty to protect the creditor by attaching

the property till the expiry of that period and if that is done the objection will be met.

Mr. S. M. BOSE: In reply to Mr. Townend may I just say that the statement that the Central Provinces provision is vastly different is correct. Mr. Townend drew attention to section 15 (*3*) where there is no certificate mentioned at all. The Central Provinces Act in no way permits of the grant of certificate as in this Bill. There is no mention of certificate and that is a very material point of difference. In the Punjab Act, it is true, that there is a certificate; but there is no such provision that no decree for the recovery of such debts shall be executed until all the debts in the award have been paid off. I do not find that in the Punjab Act. In section 20(*3*) it only says that the decree on a debt of which there is a certificate shall not be executed until 6 months after the expiry of the period fixed in the agreement. So there is in the Punjab Act the mention of a certificate but there is no such provision as is found in our clause 20 that the decree for the recovery of such debt shall not be executed until all amounts payable in respect of other debts of the debtor under an award have been paid. There is thus a vast difference between the effect of a certificate under the Punjab Act and the effect of a certificate under the proposed clause 20. Yesterday in reply to my argument that a clause of this drastic nature is not found anywhere else in the world the Hon'ble Member was good enough to say that the Central Provinces Act was an experimental Act and the Punjab Act was also an experimental Act and we have profited by that experience; and there is evolution. It is difficult to understand how the experience of the Central Provinces and the Punjab will help Bengal: we have quite different circumstances prevailing here from those prevailing in the Central Provinces and the Punjab. I do feel that the words which I object to and propose to omit are not really meant to punish the wicked creditor as the Nawab Musharruf Hosain has described him. If he is to be punished at all let the punishment fit the crime. Here the punishment is out of all proportion to his crime in lending money. He was a fool and not a criminal. He now knows that he ought not to have lent money; it was his misfortune, not a crime, to lend money. I do not understand why once he has lent money, he should be postponed till all the debts mentioned in the award have been paid off, which period may extend up to 20 years. I fix that period because under clause 21 if the Board is satisfied that the debts of a debtor are such that they cannot be reduced under the provisions of section 19 to an amount which he will be able to repay within 20 years, then the Board may pass an order declaring the debtor an insolvent. My point is that the poor creditor for whom the Hon'ble Member has such sympathy is to be put off for a period which may (I do not say it will in every case) extend to 20 years, and further if there is no award the

time may extend to a period not exceeding 10 years. As I said yesterday, that is punishment with a vengeance. When there is no award and there are no debts to be paid off under the award, even then the creditor must not sue or must not execute his decree for a debt. The reason underlying this extraordinary clause is really difficult for us to understand. I therefore support this amendment.

The Hon'ble Khwaja Sir NAZIMUDDIN: I have not much to add to what I said yesterday. There is only one point that I would refer to, that is the persistence with which Mr. Bose insists on denying the existence of a thing which is in black and white. I will read out to the House section 20(*3*) of the Punjab Relief of Indebtedness Act. It says that "where after the date of an agreement made in accordance with section 17 or of certification any unsecured creditor sues for the recovery of a debt in respect of which a certificate has been granted under sub-section (*1*) or any creditor sues for the recovery of a debt incurred after the date of such agreement, any decree passed in such suit notwithstanding anything contained in the Code of Civil Procedure, 1908, shall not be executed until six months after the expiry of the period fixed in the agreement authenticated under sub-section (*1*) of section 17."

I hope Mr. S. M. Bose will see that where there is an agreement between creditor A and debtor B, and creditor C sues him and a certificate is issued he may not realise anything until that agreement between A and B has expired which may be 20 years. I have nothing further to add. I oppose the amendment.

The amendment was then put and lost.

Babu KHETTER MOHAN RAY: Sir, I beg to move that in clause 20, second paragraph, lines 7 and 8, for the words "principal of such debt as determined under sub-section (*2*) of section 18" the words "amount due on the date of such certificate" be substituted.

In the original Bill the words were "amount due on the date of such certificate" and in the Select Committee it has been changed to "principal of such debt as determined under sub-section (*2*) of clause 18." Now the difference is that as soon as the debt is settled and a certificate granted if the creditor goes to the court generally the civil court grant interest at the rate of 6 per cent. upon the entire debt. That is my contention; that the interest should run at the rate of 6 per cent. Here it is said that the interest may be at the rate of 6 per cent. so it will be discretionary with the Board to grant 6 per cent. or a lower percentage. I want to say that the amount should bear interest at a rate at which the court is pleased to determine. Why it should be only on the original amount? Perhaps the original was borrowed some 15 years

ago and under the settlement the debt is a settled debt and a fresh contract has been entered into by the creditor and the debtor. In these circumstances I do not see any reason why interest should not run as settled under section 18. With these words I move my amendment.

Maulvi SYED MAJID BAKSH: Sir, perhaps what is present in the mind of the mover of the amendment is this: that the interest should bear on the amount due on the date. Now, two difficulties will arise. First, the interest on the amount on the date may be double the principal of the amount. In that case if a creditor had gone to a civil court he would not have got more than double the amount under the Money-lenders' Act. If this is accepted, this will contravene that section. Perhaps, in that case the Board will have to give a certificate on the amount due on that date; the amount due on that date has no reference to the principal, therefore, it may very well mean a contravention of that section so that it cannot be given in view of an existing Act. Secondly, no body knows to what extent it will go. Just, as I pointed out the other day, suppose a man had lent one rupee at an interest of two pice per month—at a compound rate of interest —thirty-three years before, if he comes to the Board now the total amount of the debt will be Rs. 1 lakh. Will the Board give him a certificate for Rs. 1 lakh at 6 per cent.? That will be simply absurd. And perhaps in view of these two difficulties, the Select Committee changed their original language and put in the words "principal of such debt"; so from the point of view of this section being a safeguard the tightening of it is more necessary than ever. I oppose the amendment.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, this was decided in the Select Committee and as there will not be any practical difficulty in giving effect to it Government oppose the amendment.

The amendment was put and lost.

Mr. H. P. V. TOWNEND: Sir, I beg to move that in clause 20, second paragraph, lines 9 to 11, for the words "until all amounts payable in respect of other debts of the debtor under an award have been paid" the words "until all amounts payable under an award in respect of other debts of the debtor have been paid" be substituted.

This is purely a drafting amendment. There is no change in substance at all; but it was pointed out that the wording "such award" in the next line was rather curious when the reference was merely to "an award." So, a change is proposed in order that the "award" referred to might be "an award in respect of other debts of the debtor."

The amendment was put and agreed to.

Babu HEM CHANDRA ROY CHOUDHURI: Sir, I beg to move that in clause 20, in the last three lines, the words "or, if there is no award, until the expiry of such period not exceeding ten years as may be specified in the certificate" be omitted.

Sir, this amendment is based on two considerations. The first is that the penalty prescribed is unnecessarily harsh. Secondly, it will give the debtor a long rope to deceive the creditor. Coming to the first, I would draw the attention of the House to clause 20 and the penalty prescribed by it. It was provided that no civil court should allow to the plaintiff in any suit for the recovery of such debt any costs in such suit or any interest on the debt after the date of such certificate in excess of simple interest, and so on. Sir, the first penalty is that the creditor who does not agree to the reasonable terms offered by the debtor will get no costs of the civil court, if he chooses to sue the debtor in the civil court which will not be less than 20 per cent. of the whole claim. You know, Sir, that Rs. 11-8 per hundred rupees is the court-fee stamp for the plaint, and then come the pleader's fee, the court-fee of petition, etc.; including all these the costs will not be less than 20 per cent. of the whole claim. Next, he will be debarred from getting interest at the contractual rate, which is also not a very small amount. Then, there is no certainty how much he will get in the civil court by a decree. It is provided here that interest at the rate of six per cent. per annum on the principal of such debt as determined under sub-section (*2*) of section 18 will only be allowed. Then, again, in section 18(*3*) it is provided that in determining the original principal of a debt for the purposes of proviso (*ii*) to clause (*b*) of sub-section (*1*) of section 19 the Board shall determine the amount of the original loan after excluding any amount of interest on such loan which may at any time have been included as principal. The amount determined under section 18 will be the amount which has been originally lent, not even the interest which has been afterwards included within the principal. Then, under the Money-lenders' Act a creditor cannot get more than double the principal lent. So, if the Board grants the debtor a certificate stating the amount which he originally borrowed from the creditor and if the creditor goes to the civil court then it may so happen that the creditor will not get more than double of what he had originally lent, though in the mean time say, 20, 25, or 30 years might have passed. Suppose, a man lent a debtor Rs. 100, 20 years back and subsequently with interest the principal of that loan became Rs. 500, and now the creditor's claim for principal is Rs. 500 and Rs. 300 by way of interest: the total claim being Rs. 800. If he does not agree to the offer made by the Board, then the Board will grant him a certificate stating that the original loan was Rs. 100 and Rs. 700 is interest. Now, if he does not agree to accept the terms of the Board and goes to the civil court, he will lose 20 per cent. of Rs. 800 by way of costs—say, Rs. 160. Then he

takes the risk of not getting more than Rs. 200—Rs. 100 as principal and Rs. 100 as interest, under the Money-lenders' Act. So many safeguards have been provided under clause 20 against a creditor not being agreeable to accept the reasonable terms offered by the Board, that there cannot be any apprehension that even if this provision is omitted, as I have mentioned, the creditor would not agree to the terms of the Board if those be reasonable. Then, Sir, it has been said while Mr. Sarat Kumar Roy moved his amendment No. 420 that if that amendment was accepted the Bill would be rendered infructuous. But I think, Sir, there is no such apprehension in accepting my amendment, because the penalty I propose to drop is applicable only in cases where no award is made. So, there cannot be any risk that those creditors who agree to the terms and there be an award, will not get anything.

Now, I come to the second point, viz., that it will give a long rope to a debtor to deceive his creditors. What is provided here is that until the expiry of such period not exceeding ten years as may be specified in the certificate, creditors who will not agree to reasonable terms will not be allowed to execute their decrees. Sir, a man gets a decree, but he is not allowed to execute this decree for a period which may extend to ten years. If that be so, I think every one—I do not speak of only dishonest debtors—but every human being who has a decree against him, got by a person who has not accepted the reasonable terms of the Board must recourse to make *benami* transfer of his property in favour of one of his relations or somebody else or dispose of it and get liquid money in his hands so that the decree-holder may not pounce upon him by executing the decree and take away what he has. In view of these considerations, when there will be no difficulty in working out the Act if my amendment is accepted, I think Government will be able to find their way to accept my amendment.

Maulvi TAMIZUDDIN KHAN: Sir, this amendment seems to be a very clever and at the same time a dangerous one. My friend says that his amendment is quite innocent; if he says so, I fear he has not himself understood its implications. As you will see, Sir, this clause provides for a certificate, and by virtue of that certificate the unreasonable creditor will not be able to get interest at a rate in excess of 6 per cent. Then, Sir, there is another thing. He will not be able to execute his decree unless, if there is any award, all other amounts under that award have been paid off; and, thirdly, if there is no award, until a period not exceeding ten years has expired. Now, my friends want that the ten years' rule should be deleted. What will be its effect in a case where there is only one creditor for a debtor? In that case there will be no award. When the only creditor refuses to come to terms necessarily there will be no award. Now, in such a

case what is the safeguard? If my friends can show that there is any reasonable safeguard, then I think the amendment may be accepted. If a creditor does not accept the reasonable and fair terms offered to him what remedy is there if my friends' amendment is accepted? The only remedy will be that the creditor will not get the costs of his suit and any interest exceeding 6 per cent—that will be the only safeguard —I think many creditors will accept these conditions; they will be satisfied with interest not exceeding 6 per cent. and will perhaps be prepared to forego the costs of his suit. Therefore, if the amendment is carried the most effective safeguard that he will not be able to execute his decree for a period not exceeding ten years, will vanish, because in his case there will be no award. If there is an award the decree cannot be executed unless all the amounts are paid, but if there is no award the creditor will be able at once to execute his decree. Therefore, if my friend's amendment be accepted, the most effective safeguard will go and this section will be rendered useless in cases in which there is only one creditor for a debtor. With these words I oppose the amendment.

Mr. S. M. BOSE: Mr. Tamizuddin Khan speaks of a case in which there is one creditor for one debtor, but I believe I am correct in saying that a debtor has in 999 cases out of 1,000 more than one creditor. The case that he thinks of occurs once in a while and such cases are very rare indeed. The terms of clause 20 are so wide that they will include all the other 999 cases. To give remedy according to Mr. Tamizuddin Khan for one case out of 1,000 will mean rope in the other 999 cases. Is that logic, Sir? The reasonable remedy for them is to say something in this clause—if their arguments are correct at all—confining the applicability of the penal clauses to the solitary case of one debtor and one creditor. But this clause, as it stands, will be of universal application. I believe the Hon'ble Member will be unable to find even anything like this in his favourite Punjab, or Central Provinces Acts. Anything of this kind is quite unheard of in any other country. As I have already said, there is nothing like this provision in the Punjab nor in the Central Provinces and the United Provinces Acts. I do not know whether the Hon'ble Member is aware that in 1935 the Madras Act XVI of that year was passed amending the Agriculturists Loans Act of 1884 so as to make that applicable to indebtedness. In the rules framed under the amended Madras Act of 1935 we have this provision that the Government has a Special Loan Officer who in a case in which the debtor and the creditor agrees on certain terms, is empowered to advance up to Rs. 2,000 for the payment of that debt. It may be noted that in an advanced and go-ahead province like Madras it is clearly provided that if any creditor does not agree to accept the amount fixed under paragraph 1, the Special Officer

will reject the application. I have been trying to find out the exact meaning of the phrase "when there is no award", and I shall be very much obliged if the Hon'ble Member in charge will kindly enlighten me on this point. So far as I can make out there can be two cases where there is no award, viz., under clauses 17, and 20 itself. In clause 17, it is provided that an application may be dismissed at any stage of the proceedings—(*a*) if, for reasons to be stated in writing, the Board does not consider it desirable or practicable to effect a settlement of debts, and then under clause (*c*) where the debtor is attempting to use, etc. Under paragraph 1 of clause 20, it is said that the Board will be so empowered under section 7 instead of passing any other order which it is competent to pass, may grant to the debtor a certificate, etc., or if there is no award—which is really very vague—until the expiry of such period not exceeding ten years, etc. Perhaps one may infer from what the Hon'ble Member has said that it is not the intention at all to refer to clause 17. If that be so, as Mr. J. N. Basu has pointed out, why should this not be made clear? So I really want to understand it as the matter is so very vague. If there is no award, under what circumstances can this clause come in at all? So far as I can make out it is that if there is no application and no award then this clause will apply. Further, I see no reason when there is no award, and debts are not scaled down and there is no such thing as moratorium in some sense, when the Board is not doing anything at all; why there should be any delay or any impediment to the creditor filing a suit or executing his decree. If there is an award the proceedings may go on, but when there is no award at all and when the Board does not take the debtor's application into consideration at all, I do not understand why in that case there should be this proviso that the creditor must not sue for ten years. I hope the Hon'ble Member will kindly enlighten me on this point.

Mr. SARAT KUMAR ROY: Sir, I rise to support the motion moved by my friend Babu Hem Chandra Roy Choudhuri. I have already discussed before this House that the penalty provided in clause 20 for enforcing compulsion on creditors who would not agree to accept the debtor's offer, is unduly harsh and is out of all fair proportion with the nature of the offence on the part of the creditors.

But here in the last few lines of the second paragraph of clause 20, the penalty is not only excessive but is highly inequitious. I do not think there is any justification for saying that you would make no provision for repayment for ten years and at the same time debar the creditor from pursuing his remedies for such realisation through the Civil Courts. It seems that you would allow the debtors to go on living merrily all the time while the creditors' dues would go on swelling up for years. It may so happen that at the end of that period, such

dues would be so heavy that the debtor will have to be declared insolvent and all his holdings sold for his debts. I do not think such a position is coveted from the point of view of either of them.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, it is a great pity that in spite of repeated explanations Mr. S. M. Bose cannot understand the matter—I shall not put it in stronger language than that. But let me first of all deal with this one point which he goes on repeating, viz., that there is no such provision in the Central Provinces Act. Even if it does not occur there, the provision is in itself a salutary one. The fact remains that we have to consider whether on merits it is a good or bad provision.

Now, Sir, I come to the other point, viz., the question which he has put to me forcibly, viz., what do we mean by "where there is no award." The answer is very simple. What will happen if the creditor refuses to come to any terms whatsoever and simply says that his claim is for Rs. 100 which he has got in black and white and that he is not prepared to reduce it by one pie; he goes and sits tight in his house refusing to come before the Board after having submitted a statement of the debts and complied with the provisions of the sections before section 20. He says that this is his legitimate claim for the amount he has advanced, this is the amount of his interest and he is not prepared to reduce it by one pie; he *salams* and goes home. Then what is the Board to do? The Board cannot enforce any agreement and there is no award. In such a case the Board finds that the creditor has adopted an unreasonable attitude; and if the debtor has made a fair offer for the settlement of his debt, the Board will have a fair ground for granting a certificate that the creditor will not be able to sue or execute a decree for ten years or for any period less than that. What is wrong in that provision I cannot understand. If you have creditors who are not prepared to compromise or to reduce their debts, then this clause will apply. If the clause is not there, then there is always the danger that there will be refusals on the part of creditors to come to terms; but once the clause is there the chances are that they will adopt a reasonable attitude. As I have said, the clause will be applied very seldom and there will be no occasion for it simply because the creditor will be reasonable and agree to terms which will suit him. But, on the other hand, no body wants to give up one pie—and if he can do it without any injury to himself why should he not do so? Therefore it is obvious that this clause cannot do any injury to a creditor who is prepared to accept a fair offer.

Babu JATINDRA NATH BASU: Sir, may I just call the Hon'ble Member's attention to the provisions of clause 17 (*a*) and (*b*) and enquire what will happen where there is no award owing to fraud on the part of the debtor or owing to the Board finding that the debtor is in default?

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, in that case the application will be dismissed and if after that any Board is so perverse as to grant a certificate to the debtor, the creditor can appeal to the appellate officer and have that certificate cancelled; no certificate can stand in a case like that. If you accept the principle, the debtor must come with clean hands in order to get the benefit of this provision. How can he get the benefit of this clause 20 when he is guilty of fraud? If the whole case is going to be dismissed because of fraud, is it conceivable that either a Board or an appellate officer will grant a certificate under clause 20? In such a case the application will be dismissed and finished forthwith. You cannot think of applying clause 20 in a case where the debtor is guilty of fraud and dishonesty because his application will be dismissed on that ground alone.

Babu KHETTER MOHAN RAY: Is there any bar which would prevent the Board from granting a certificate?

The Hon'ble Khwaja Sir NAZIMUDDIN: Instead of passing any other order—that is a bar in itself—they have passed the order dismissing the application, and therefore there is no justification for giving a certificate. The application is there, and they have dismissed the application.

These two points, Sir, are absolutely clear. Let me point out to the House again that this clause will only be applied if the debtor's offer is fair. But as I have said, if any creditor allows this clause to be applied to him, or a certificate granted, he does it with his eyes open; if he prefers to wait for ten years rather than accept the terms offered, he does it deliberately, knowing full well the position. It is obvious that no man with common sense will refuse to accept a proposal which appears to be reasonable and based on common sense not only in the view of the Board but also the appellate officer. Therefore I submit that the apprehensions of the supporters of these amendments are groundless. At first sight obviously it does appear to be rather drastic, but if we go deeply into it, it will appear that it is not so drastic as it looks, and on the whole it will not adversely affect any creditor whatever, if he is prepared to be reasonable.

The amendment was put and lost.

Mr. DEPUTY PRESIDENT: With regard to the next amendment, I propose to have one discussion on amendments 425 to 433, all of them refer to the terms of payment. I will of course put them separately if there is no objection.

Babu KHETTER MOHAN RAY: I beg to move that in clause 20, in the second paragraph, line 13, for the words "ten years" the words "two years" be substituted.

Sir, if there is any necessity for restriction or rather compulsion on the creditor, two years is quite sufficient. He shall have to wait for 2 years in order to sue for the recovery of his dues. Mr. Townend in connection with another amendment told us that the creditor would not be affected, and besides there is a safeguard against property being sold under clause 32 of this Bill, but that the Board can attach the property of a debtor. No doubt the Board has the power to attach any property of the debtor as soon as the application is made. But may I point out to the Hon'ble Member when a debtor refuses to accept an offer, which the Board considers to be fair, will the Board pass orders attaching the property of the debtor in order to safeguard the interest of the creditor? They will be displeased with him and will do nothing of the kind. In the long ten years the debtors generally, as far as our experience goes in the civil court, will find ten years ample time to conceal thier properties, to allow rents to accumulate, their holdings to be sold for arrears of rent and revenue and other things, and will not take care of it. The original debtor may die in the meantime and the property be subdivided; no trace of the property will be found after ten years, and when the creditor will get a decree to realise his dues he will not find a vestige of the property left. These are the things, Sir, I suppose the Hon'ble Member ought to consider.

With regard to another thing, the discussion has proceeded in connection with these and other things on the supposition that 10 years' rule would be applicable only to the case of one debtor and one creditor. This is not the case. When the whole body of creditors refuses to accept the offer there will be no award as in the case of one debtor and one creditor. If the entire body refuses to accept there will be no award. And if you look at it from another angle of vision it will come to this: the main plank on which the arguments of the Hon'ble Member and Mr. Townend rest is that the offer of the debtor in a case in which an award is not passed is a fair one. But I think the presumption is that there is no fair offer made by the debtor, otherwise some of the creditors would have accepted it. In this way I would point out to the Hon'ble Member to consider whether 10 years should be the maximum period for a creditor to wait for the recovery of his dues; when there is no award it presupposes and it is presumed that there is no fair offer whatever. With these words I place my amendment for the acceptance of the House.

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur: I rise, Sir, to support the motion. I do so not only for the sake of the creditor, but for the interest of the debtor. Unless this is accepted, the debtor's position will be quite ruinous. Just think for a moment what would be the effect if ten years' time be allowed. Interest will be accumulating, creditor will not prefer to go to the court on the face of the punishment that has been provided in the Bill, namely, that he will not get

any cost of the suit nor the interest higher than six per cent. per annum. So naturally he will allow his debt to go on, as my friend Mr. Sarat Kumar Roy says and the debtor meanwhile will sit merrily while his debt will be accumulating heavily. After ten years if a creditor files a suit it will take about two years more to get the decree executed. By that time the interest will be so heavy that it will be impossible for the debtor to pay. If he be a solvent man he might pay, but just look at the amount he would have to pay. The Hon'ble Member has cited one instance where the principal amount came to 10 or 12 times more at the time of execution. This will be another instance of the same nature which the Government force the creditor to adopt. As for a person who is not very solvent he will be ruined. Thus from the debtors' point of view I think it is reasonable that two years' time be substituted for ten. I quite agree that a creditor, an unreasonable creditor, should be penalised; punish him by all means for not accepting the reasonable fair offer. I fully agree with the Hon'ble Member's point of view that there should be a penal clause in this Bill so that the creditor should not be unreasonable, but at the same time I do not think it will be a penalty on the part of the creditor if you do not allow him to seek any remedy for ten years to come for the purpose of realising his dues. Mr. Townend says that there is no bar for the debtor to pay during this period but naturally it will not be expected that the debtor will pay when he gets this advantage over the creditor that he is debarred by law to seek the protection in the court for his dues. Generally a debtor will allow the debt to go on and the interest to accumulate. So the real punishment will be not to the creditor but on the debtor. For the sake of this, I think my friend the Hon'ble Member should accept this proposal.

As regards the argument put forward by Mr. Townend that in the case of one debtor and one creditor, I think the punishment is quite sufficient, because he will not get the costs if he goes to court, and the cost is not a trifling amount, it amounts to about 20 or 25 per cent. of the whole amount. Moreover he will not get more interest than six per cent. in addition. This is more than enough for the creditor who does not agree to the reasonable terms offered by the Board. If more punishment be inflicted it will indirectly affect the debtor who will be punished in the long run.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: A full debate is going on the wrong interpretation of the section. The section says that the period may extend to 10 years, but it does not say that in all cases it will be 10 years. The discretion has been left with the Board. The Board may certify that in so many years' time the creditor will be able to realise his dues and that discretion will be based on the experience of the Board and the interpretations of the different sections of this Bill and the common sense of those people. So my friends are under a misapprehension when they say that if it is reduced to 2 years

it will serve the debtor better. Why should we say precisely two years or three years, five years or ten years? Cannot we leave this discretion with the presiding officer? He will be the best person to judge on both sides provided the discretion is left to the Board. I think this is a very salutary provision and if we have no faith in our own people, why do we clamour for self-government? I think we should rely upon our own people and believe that they will do justice in every case. With that faith I believe this Bill should be passed. If on the other hand we have no faith in the Board or the members of the Board, I think we should have no faith in ourselves at all. We ought to be fair to our own people who I believe will do much better than all the courts put together. They are men of strong common-sense but in the courts the common-sense may be wanting in many cases because they want to do everything with the help of law and law has become so very defective that if you go to a court of law you may get adverse decisions. I think the villagers will think 10,000 times before they give a wrong decision because they will be subject to the criticism of the village folks and they will be under all sorts of agitation in the area when they are dealing out justice or injustice. I think it will be safe for us to rely upon them and leave the thing to be decided by them.

Maulvi RAJIB UDDIN TARAFDER spoke in Bengali against the amendment.

The following is an English translation of his speech:—

Sir, I beg leave to oppose the motions Nos. 429-433. It is said in the motions that in clause 20 in the second paragraph, line 13, for the words "ten years" the words "two years" be substituted.

The clause 20 of the Bill provides that when a debtor applies to the Board for settlement of his debt, such application being considered to be in order by the Board, if the creditor disregards the proposal, then the Board will issue a certificate to the debtor by virtue of which the creditor shall not be able to realise his claims within a period of ten years though interest at the rate of six per cent. will accrue to him in respect of the same. The movers of the above two motions want that this period of ten years be reduced to two. But I fail to understand if there be anything to be said against this clause, while speaking against this clause many of my friends have said that they have nothing to say about those creditors who will disregard the provision of this clause but they apprehended that this clause might adversely affect the creditors in general as well. In this connection I like to remind my friends that they need not feel any apprehension on this account, as the provisions of this clause will affect none but those creditors who will disregard the same. It may be clearly understood that those creditors who desire to override the just and legitimate claims

of the debtors, do not only want to afflict hardships on the debtors but also to turn the ordinary and simple money-lending business into the intricate and vicious ways of the proverbial usurer Shylock the Jew.

The money-lenders of our country have multiplied small sums originally lent by adding interest at exorbitant compound rates and finally have fresh deeds executed for the whole amount as principal; thus Rs. 50 lent a few years ago have come up to Rs. 500. It has now become impossible for the debtors to pay up these heavy debts. If Government manage to have these debts realised by a simple decree in favour of the creditors, what reasonable objection can there be to this? If any creditor does not abide by this simple decision and goes against the same, I think the provision of withholding the realisation of his claims for a period of 10 years will be quite justifiable. In view of these facts I vehemently oppose the motions and hope that the mover of the same will kindly withdraw it.

The Hon'ble Khwaja Sir NAZIMUDDIN: I think the Nawab Sahib hit the nail on the head. His argument was perfectly relevant when he said that ten years was the maximum period and it was not meant that every time it must be ten years. You can have 2, 5 or 10 years but why make it rigid by fixing a limit; leave it to the discretion of the Board and they will fix the time according to the special circumstances of each case. In a case where the creditor is very unreasonable or very hard-hearted you may have justification for fixing the period at ten years. In any case where he is not refusing to compromise or to reduce the debt but on the whole his treatment has not been bad the period may be fixed at 2, 4 or 5 years. Therefore, I think, the amendment is not justified. If the creditor thinks that there is any likelihood of the property going away, as Mr. S. M. Bose is murmuring, then in that case if the offer is reasonable the creditor should accept it and not allow the property to go waste and get nothing. Something is better than nothing: on that principle he should not refuse the fair offer but accept it. Therefore, I oppose the amendment.

The amendment was put and lost.

Babu JATINDRA NATH BASU: Sir, I beg to move that after clause 20, the following proviso be added, namely:—

"Provided that all alienation by the debtor of his property within twenty-one years from the date of the award shall be deemed invalid and inoperative as against creditors."

The grounds for moving the amendment are that during the period that the scheme of administration set out in the award is in operation there should be a bar to any alienation by act of the debtor himself. So far as any sale by the Board itself is concerned that stands on a

different basis, but the debtor himself should not be allowed to do away with the property so long as the scheme of the award operates, and under clause 19, that has been passed, some creditors are put off. They are not to have any relief during the period that may be mentioned in the certificate issued under clause 20. If the debtor is left free to deal with his property in any way he likes during that period then the creditor may at the end of the period have nothing to proceed against. Under the next following clause (clause 21) the time that may be allowed to a debtor to have the scheme in operation may extend up to 20 years. Therefore if the period during which the debtor should not be given the liberty to alienate his property should be so fixed as will just exceed the period that may be allowed under the award for the scheme of liquidation to be carried out: then any creditor or holder of a decree will not be adversely affected; otherwise the debtor who desires to defraud his creditor may alienate his property and deprive the creditor from proceeding against him. I have considered the provisions of clause 32 under which there is an attachment.

Sir, it is not clear from that clause itself as to who are the persons for whose benefit that attachment will be effected. As you have seen in clause 20, there may be some creditors who are within the award and there are some who are outside the award. Those who are outside the award will be put off, but those who are within the award will be there. So, it is not very clear as to whom clause 32 has reference. If it means, though it is not stated so clearly there, that it can benefit those who are within the award, then the creditors to whom reference is made in clause 20 who are outside the award, will lose the benefit of being in a position to avail themselves of any property that the debtors may have. I, therefore, move my amendment.

Mr. SHANTI SHEKHARESWAR RAY: Sir, I support the amendment moved by my friend Mr. Jatindra Nath Basu. It is a very reasonable amendment, and I find no reason why Government should not accept it. The position of Government in this matter is certainly not a very enviable one. It is well known that for years the Government of Bengal have been sleeping over this problem, but, Sir, at long last the sleep of *Kumbhakarna* has been disturbed and they have brought forward this measure—not of their own accord but if I may be permitted to say so, being lashed by repeated reminders by representatives of the people here. Sir, their attitude, as it was pointed out the other day, is one of vacillation. They have neither the courage, nor the foresight to tackle the problem in the proper way, and the result is that they are unable to please either the debtors in distress or the creditors. Sir, this amendment has been framed in a very correct spirit. The spirit should be that no one should feel that an injustice is going to be done. If you accept this amendment, the creditors who

have advanced money will feel that their interests have been safeguarded to a certain extent and that Government have not stepped in as an incarnation of injustice to defraud them of their just dues. The whole spirit of this measure should be not one of coercion but one of appeal to the spirit of sacrifice of the well-to-do people of Bengal who have lent money. They should be called upon to make a sacrifice in the interests of the large number of indebted *raiyats* who are in a helpless position. This attitude should not be encouraged by the Government of Bengal on the part of the debtors that they should be in an exultant mood, and that the creditors should bend their knees before the debtors or before the Boards. Government should, rather, encourage the idea that the creditors are making a sacrifice and that the debtors are being helped not by the Government of Bengal but the people, that is these creditors who are being called upon to make this sacrifice. After all, Sir, it is not the Government of Bengal that is being asked to make any sacrifice at all. It is, on the other hand, the creditors who have advanced their well-got good money to the *raiyats*. It may be that they have charged a high rate of interest; but if they have done so, they have done so with the consent of the debtors and under the existing law. If there has been any inequity or injustice, there are courts of law that have helped the *raiyats* or the debtors in getting their remedy. You cannot get behind the fact that you are calling upon one section of the community to make a sacrifice, and you should emphasize this point and not the other view that the debtors are entitled to this relief. From this point of view, Sir, I think the Government of Bengal should welcome an amendment of this nature, because it will not help the dishonest debtor to defraud his creditors. I do not know, Sir, what the attitude of Government is going to be in this matter. Generally speaking, their attitude is more or less like that of the well-meaning wife who is not well-trained in cooking good dishes, but who wants to do good, but not having the proper training, fails to do so, with the result that they serve out measures which create more trouble than good. Sir, I think there should be no opposition from members of this House who have taken upon themselves to espouse the cause of their debtors. I hope, Sir, the House will not misunderstand my attitude. My sympathies are well known. When the Bengal Money-lenders' Bill was under consideration, I made my position quite clear, and those who followed the discussion on that matter—either in the House or in the Select Committee—shall bear me out that my sympathies are with people in distress. I may also draw the attention of the House to my Note of Dissent on that occasion where I specifically mentioned that Government should do something for the *raiyats*, and in this House I suggested that creditors should be called upon to make a sacrifice. But, Sir, there is an end to the limit of that sacrifice, and it should be of a voluntary nature, as far as practicable. The moment you create a feeling among the creditors that injustice is being done to them, you

frustrate the object of this measure. It ought not to be the intention of Government to create a misunderstanding between the two sections of the community—creditors and debtors. On the other hand, you should see that their relations are happy. Well, the poor debtors—*raiyats* and cultivators—will want money again: they generally want money every year, and any harsh measure likely to alienate the sympathies of the *mahajans* and well-to-do people will not help the *raiyats*, so that the latter will be in a quandry,—in a miserable condition. I say this because I feel for the *raiyats*, because I know that the interest of the *raiyats* is as much their interest as it is my own as a *zemindar*. Therefore, I appeal to the House and the Government to accept this very reasonable amendment.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, the Government of Bengal in bringing this Bill forward have done one thing, viz., to test the sincerity of those gentlemen who get up and claim that their heart beats for the poor cultivators and who have called upon Government to do this and that have now to face the thing in actual form. These gentlemen now find that they do not know what to do under the circumstances. Mr. Shanti Shekhareswar Ray has, certainly, on various occasions expressed great sympathy with the tenants and perhaps—although I do not remember, but I accept his statement,—he suggested that something should be done to give relief to the indebted cultivators. But when a Bill in a tangible form is placed before him, he immediately finds a hundred and one flaws and wants to make it absolutely impracticable.

Mr. P. BANERJI: Because the Bill is an eye-wash.

The Hon'ble Khwaja Sir NAZIMUDDIN: Well, the test of the pudding is in the eating thereof. Ask the cultivator whether it is or it is not something solid and then you will get your reply. So, the question is whether the cultivators think this measure to be good or not: that is the only important point.

Regarding the amendment that has been moved, the difficulty is that there is no need for this provision. The Boards can attach property under clause 32. I remember Mr. J. N. Basu expressing some doubt about this. It is obvious that attachment will remain for the sake of those creditors who have agreed to a certain amount of compromise and if their names are mentioned in the award. Obviously, this will not apply to a creditor against whom a certificate has been granted. Naturally, as I have explained, that cannot be so. Mr. Basu in this amendment goes much further than is necessary for the protection of the creditor. Suppose, the debts are cleared off within ten years: the debtor will not be able to alienate any property for another eleven years, and why should he not be able to do so. Why should

any creditor who lent after the ten years perhaps, be protected? Also suppose that a debtor borrows from several creditors; he could not settle his debts with a mortgage by sale or transfer of his land, because such sale or transfer would be inoperative as against the secured or the unsecured creditors. The amendment in its present form is absolutely impracticable, and Mr. Basu will agree that if a creditor wants to make a *bona fide* transfer for the purpose of making a settlement by cash payment, he should be allowed to do so. Suppose that a creditor "A" who is going to have his amount paid off in ten or fifteen instalments, comes and tells the debtor to transfer the plot of land and to pay him a certain amount and then he would cancel his whole debt; the debtor does so and the amount of the equated payments, which was made to the secured creditor, may be paid to the unsecured creditor, who will receive, however, a very small amount; and thus it may be to the interest of the creditor in such cases to allow alienation of his property. In view of the above, Sir, I would request Mr. J. N. Basu to withdraw his amendment.

The amendment was put and lost.

(Adjournment.)

The Council was then adjourned till 2-15 p.m.

(After adjournment.)

(Here the Deputy President vacated the Chair which was occupied by the Hon'ble President.)

Babu HEM CHANDRA ROY CHOUDHURI: May I, with your permission, Sir, move a short-notice amendment to clause 20?

Mr. PRESIDENT: Has the Hon'ble Member in charge of the Bill seen it?

The Hon'ble Khwaja Sir NAZIMUDDIN: I have no objection to the amendment being moved, but I shall oppose it.

Mr. PRESIDENT: You may, but you agree to the amendment being moved. In any case, Hem Babu, you have my permission to move it.

Babu HEM CHANDRA ROY CHOUDHURI: Sir, I beg to move that after clause 20, the following proviso be added, namely:—

"Provided that alienation by the debtor of his property with a view to defraud his creditors within the period during which the creditor

is debarred from executing decree under section 20, and one year more, shall be void."

Sir, clause 20 provides that even where there is no award, a creditor would not be allowed to execute a decree until the expiry of such period, not exceeding ten years, as may be specified in the certificate. The effect of this provision will be that dishonest debtors, in order to defraud creditors, will have an opportunity to dispose of their properties in order to defeat the claims of the creditors. In clause 32, it is provided that the Board may attach the debtor's immovable property after the receipt of an application under section 9 of the Bill, and that that attachment shall continue until it is withdrawn or cancelled by the Board. Under clause 32, the question of attachment of property and the period of continuance of such attachment is entirely left to the discretion of the Board. Sir, a Board which will issue a certificate under clause 20 cannot be expected to be favourably disposed towards a creditor who does not agree to the terms offered by the Board. This clause 20 is there only to persuade creditors who are said to be perverse, but it cannot be the intention of either Government or of this legislature to make such a provision by which a creditor will not have an opportunity to realise his dues from his debtor. Sufficient penalty has been provided in this clause for unreasonable creditors. Over and above that, if a loophole is left to the debtor to dispose of his property in order to defeat the claims of the creditor, I think that is not justifiable. If my amendment is accepted, it would not, in any way, harass the honest debtor, and it would not touch any *bona fide* transfer for the maintenance of family and even for meeting some urgent necessities. Suppose, a debtor has got ten acres of land, and he has got debts amounting to Rs. 500. Now, if for the maintenance of his family or for meeting some urgent demand, he disposes, say, two acres of land, one cannot object to that, saying that the transfer has been made with fraudulent intention. If the amendment is accepted, the effect will be that the debtor will not have a free hand to dispose of his property in order to defeat the claims of the creditor. With these words, Sir, I commend my motion to the acceptance of the House.

The Hon'ble Khwaja Sir NAZIMUDDIN: The whole object of clause 20 is to prevent creditors having certificates issued against them. We do not want certificates to be issued, but we want creditors to come to a compromise. So, any softening of the rigour of clause 20 means that they would prefer to have the certificate rather than come to a compromise. That is not either the object of the House or of Government when making this provision. Our aim is to have the debts scaled down, and, as I said before, Sir, if any creditor deliberately incurs the penalty like the one in clause 20, then he should have no sympathy, as all he has got to do is to accept a fair offer. If he does so, there is no question of clause 20 at all. The mover has said that if a man

having ten acres of land, alienates two acres for the purpose of maintenance of his family or for urgent necessary expenditure, that will not be considered as fraud against his creditor who has been stopped from executing a decree. This is purely a question of interpretation, Sir——

Babu HEM CHANDRA ROY CHOUDHURI: No, Sir, it is purely a question of fact.

The Hon'ble Khwaja Sir NAZIMUDDIN: Hem Babu may think so, but it is not. There may be others who may contend that any alienation of property is with a view to defraud the creditor, because that reduces the security of the debt. Where the whole property is a security for a debt, if you reduce any part of it, you are reducing the value of the security, and, therefore, it may be argued that the alienation has been made with a view to defraud the creditor. Where a debtor has made an offer to a Board, and the Board and the appellate officer think that it is a fair offer, we have no other alternative but to have recourse to this clause, if the creditor does not accept that fair offer. Therefore, Sir, I must oppose the amendment.

The amendment was put and lost.

The question that clause 20, as amended, stand part of the Bill, was put and agreed to.

Clause 21.

Mr. P. BANERJI: I beg to move that clause 21 be omitted.

Sir, clause 21 is for the adjustment of debts of insolvent debtors. It is provided that if a person is found to be not in a position to pay within 20 years, he will be declared insolvent, and a certificate to that effect will be given to him. Sir, what I fail to understand is why the ordinary procedure should not be adopted. There is the Insolvency Act, and if a debtor is found to be insolvent, he can have protection under that Act. As the Hon'ble Member has said, Government are now pleading for the cause of the poor tenants, and they want any how to see that they are better off in life. In the proviso, it is said that the rent must be paid first and then some provision at least for his maintenance must be made by the Board. That is all right. Here we find that everything is all right; nobody except the creditors will lose. Government will not lose anything as they will get their cesses and revenue and with that end in view they also want to protect the *zemindars* because rent is the first charge which must be paid. Then remains the debtor for whom the Hon'ble Member is always anxious and on whose behalf he was this morning hurling bricks at the opposition but could not hit anybody. I gave him a challenge then and I give it to him now that if he will come outside and meet the people's

representatives or the people in general then he will find that the position is quite different. Sir, he has often accused us of not espousing the cause of the tenants. I can prove to you, Sir, in a minute what the real intention is, by referring to this section and sub-section (*b*) where a certain provision is to be made for the maintenance of the poor tenants by leaving his homestead and one-third of his holding or a minimum of one acre of land, *i.e.*, three bighas. Now, let us see what is the produce from this area. According to Government estimation the average yield per bigha is 5 to 6 maunds; admitting for argument's sake that the yield is 8 maunds per bigha the total yield amounts to 24 maunds. Now, out of this, rent has to be paid and half of it he has to keep for his maintenance. Half of the yield will not amount to more than, say, Rs. 20. Now, Sir, if that is the income of one person for the whole year—and the Hon'ble Member knows it very well that the poor tenant has also his wife and children to maintain—how he is going to help these poor people. The Hon'ble Member has said that the test of the pudding is in the eating. I can challenge this from the facts and figures before us. I do not understand how on earth is it reasonable to expect that the yield from three bighas of land will help a person to maintain his family for the whole year. Now, if that be so, may I enquire of the Hon'ble Member the justice, the reasonableness or the equity of suggesting such a mockery in this Bill? Therefore it seems that the whole thing is a mockery and I maintain that I can substantiate my statement by facts and figures that the real object of the Hon'ble Member is not as he often professes—to give relief, even a temporary relief, but to suggest a thing which is nothing but absolute mockery. As we proceed with this section as it is we find that under sub-section (*b*) the property will be sold and the proceeds thereof shall be utilised towards the payment of debt in such manner as the Board may direct. When the property will be sold the creditor will not get any set off. As you know, Sir, the creditor will not get anything nor can they bid. Eventually the property will be sold to the highest bidder by an outside purchaser. The tenant cannot purchase, nor the creditors can as they will not have any money; and as was suggested yesterday by Maulvi Syed Majid Baksh, there will be an invasion from outside as there is already in trade and everything and the *zemindars* and creditors are all suffering owing to that invasion and the result will be that the property will be sold to non-Bengalis. I think there should at least be some provision for fixing up some minimum price for these lands or otherwise these properties will be sold very cheaply. The creditors will not get any set off nor will be able to bid and thus they will be deprived of their dues. So they will lose very heavily under this arrangement as other people will come forward and get hold of the property. If instead of that Government would come forward and ask these people to take protection under the Insolvency Act the property can at once be sold and the sale-proceeds divided amongst the

creditors on a *pro rata* basis or an agricultural society may be started in which the creditors will be very much interested as in such societies the cultivators who will lose two-thirds of the property will find employment. Nowadays the question of unemployment is very acute and if some agricultural society were formed it could take over all such lands. If that be done, then Government's position will also to a certain extent be maintained. Further, we find that under sub-section (2) a certificate of discharge will only be issued. There is also another difficulty and that is that the property will be sold by the certificate officer under the Public Demands Recovery Act of 1913. As I have said, sometimes it may so happen that the property may be purchased for a small price and then the creditor will have to go to court for setting aside the sale. In some cases the creditors may be poor widows and such persons will be greatly handicapped. The rich creditors will not in any way be touched by this Act but it will be the poor creditors who will be touched. Under section 26A of the Bengal Tenancy Act the landlord gets a *salami* of 20 per cent. and they might use their discretion and pay 10 per cent. and take the property. In this way as I said in the beginning there will absolutely be a regular crusade against the middle class people who are trying always to fight freedom's battle while the Government policy is not really to give relief to the poor tenants as is manifested by this clause. Therefore, I say that Government's position is not tenable at all and therefore the clause should be deleted.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, it is obvious from the speech of the mover of this amendment and the little support he commands in a matter like this that it is not necessary for me to go into the details of what he has said because some of the proposals he made cannot be made by any body but him. But the main point is that this clause 21 is a very important provision in this Bill; it was recommended by the Royal Commission on Agriculture and I think also by the Central Banking Enquiry Committee. Both these bodies suggested that some cheap method should be found of insolvency procedure for the agriculturists. We have suggested this in the Bill with the addition of leaving to the debtor his dwelling house and at least one acre of land—one-third of his holding or at least one acre. Now, the real question is about the justification of leaving the dwelling house and one-third of the land intact. To begin with, the world is becoming more humanitarian—that is the real tendency of the world; and if the insolvency laws which were framed in days gone by were before the legislature now they would be looked at from a different point of view. It is felt, Sir, that people should not be deprived of all they possess even for settlement of debts incurred by them. This principle was very forcibly recommended by the Royal Commission on Labour which visited India and their recommendation is that a certain

percentage of the labourer's wages must be immune from all attachment whatever, irrespective of whatever debt he may have incurred. That is to say, he should not be deprived of the means of maintaining himself, he should not be turned out in the street to starve. That is the principle behind this, and we have tried in a way to give effect to that principle. It is absurd to say that we suggest by this that in a case of insolvency a man should be left so much land as to enable him to sit at home and grow fat on it. It has only been provided that he should be left so much as will enable him only to maintain himself. If we pursue Mr. Banerji's argument to its logical conclusion, it will be found that he assumes that as actually no cultivator can maintain himself on the amount of land that he possesses, he ought to starve, There are about 28 per cent. of the people who possess less than an acre. How do they live and how do they maintain themselves? They are not dying, they are existing. So it is obvious that if we can leave a cultivator at least one-third of his holding, and not less than one acre, he will be able to have a certain amount of land, and he can supplement that income by means of manual labour, or any other means that he can employ. If he has his dwelling house where he can rest at night, and have a small interest in the land, you will not have a large number of people, without any land, irresponsible landless labourers, ready for any mischief that may be suggested to them.

Sir, before I sit down, I would also refer to what are the true facts about this provision. Mr. Banerji, whenever I have made any remarks, though genuine, gets up time and again and states he does not believe what I say; but Sir, at present there are in Calcutta representatives of cultivators from most of the districts of Bengal, men who can command at a meeting an audience of about 10 or 20,000. Has he consulted them as to what they think of this provision? (MR. BANERJI: Those meetings were organised by Government.) It is obvious that what he is representing on this point is certainly not in the best interest of the people. I fail to see how this is going to affect the middle class. It is a misrepresentation of facts—to suggest that this clause 21 strikes at the middle class. It is not so. It is against the people who would ordinarily not get any more than what we have suggested, except the price of the dwelling house and one-third of the holding. The idea is that the man's property will be sold up and that the proceeds will be distributed according to the order passed by the Board, so that the creditor will get what he would have got if he goes to the court. The only amount he is losing is the amount that would have been realised from the sale of the dwelling house and the one acre of land. That is all. That is the only loss that the creditor will have to suffer. Are my friends opposite willing to accept the position that the tenants who are not in a position to pay their debts, should enslave themselves all their lives knowing that they will not be able to get out of debt? Surely they must realise that

this will make these tenants slaves, economic slaves. I repeat that the hardship, if any, amounts to the extent of the land or holding that will be left under this clause of the Act, and as I have said the modern trend is towards the humanitarian principle not to deprive a man of everything he possesses, but to leave him somewhere where he can rest his head at night, and at the same time a little land which he can cultivate.

The amendment was put and lost.

Mr. H. P. V. TOWNEND: This is one of several amendments which should be read together. Amendments 448, 486 and 488 are in fact all, in substance, one amendment. The whole thing is to a great extent merely a matter of drafting. There were certain criticisms passed on the wording of this clause as it emerged from the Select Committee, and it was thought best to re-write it completely so as to meet the criticisms without altering the sense. At the same time I may mention one change which may be regarded by some as a change of substance, though for my part I think that it is not. The clause as it stands provides that the debts when reduced "shall be paid in equal annual instalments". This would suggest that every creditor would be paid a fixed proportion of his debt every year and that no class of creditor could be paid off completely before others. That would prevent any priority being given to labourers' wages, landlords' rent, amounts due as taxes and the like, —a thing which was not intended. Amendment 488 proposes to give the Board power to direct what amounts shall be paid each year to different creditors: in my opinion it would merely make clear a point which the Committee left obscure but some may think it to be of more importance than that. This point really is relevant to amendment 488 and not here.

This amendment, number 448, takes in fact the main provisions of sub-clauses 21 (*1*) (*a*) and 21 (*1*) (*b*), (which deal respectively with the reduction of debts and with the satisfaction of the debts by sale of a portion of the property) and put them together concisely: it then puts into two separate clauses, (*1b*) and (*1c*), the machinery for carrying out these main provisions. The less important provisions (though quite important from a working point of view) are not essential in clause (*1*). To put the matter in another way,—"when the Board is satisfied that the debts of a debtor are such.....etc." (as clause (*1*) says) they may do one of two things: these things are stated in sub-clauses (*a*) and (*b*) of clause (*1*). Under these amendments, if the Board uses (*a*), their procedure is laid down in (*1b*); and if they use (*b*), their procedure is laid down in (*1a*) and (*1c*). There will be found to be nothing really complicated in all this when all the amendments mentioned are read together. I would ask, Sir, whether I should now move the other two amendments at this stage or what I should do.

Mr. PRESIDENT: You can move them in the order that they appear on the paper, so long as the House understands what you are doing.

Mr. H. P. V. TOWNEND: There will be no difficulty on my part. If this is passed and the others rejected the clause will be meaningless: but I rely on their being all accepted by the House. I shall only move one.

Maulvi TAMIZUDDIN KHAN: Which one?

Mr. H. P. V. TOWNEND: No. 447-48.

I beg to move that in clause 21 (*1*), from line 8, for the words beginning with "pass an order declaring" and ending with "in such manner as the Board may direct" the following be substituted, namely:—

"by a written order declare him to be insolvent and may by such order either—

(*a*) reduce his debts to such amounts as it considers that he can pay within a period, not exceeding twenty years, to be mentioned in the order, or

(*b*) if, for reasons to be recorded in writing, it does not consider the reduction of his debts under clause (*a*) to be desirable, direct that, subject to the provisions of sub-section (*1c*) and of section 22, all his property shall be sold and the proceeds shall be utilised towards the payment of his debts in such manner as may be specified in the order."

Babu HEM CHANDRA ROY CHOUDHURI: I rise to oppose this motion. My reason for opposing this amendment is this. By substituting this amendment to the provisions of the Bill, that is the provisions of clause 21(*1*)(*a*), Government wants to leave the discretion, the full discretion, to the Board as regards the amount of reduction of the debt. Sir, the Bill provides that the Board will be entitled to reduce the debt to a sum which it considers the debtor may pay within a period not exceeding 20 years. But there is a proviso which says that in case of this reduction the Board will take into consideration what the debtor can pay in a year of normal harvest to the creditor, after retaining for his maintenance one-half of the harvest which remains after paying the landlord the current rent of his land. But what is provided in the amendment is that the Board may reduce his debt to such an amount as it considers the debtor can pay in a year. But no rule is laid down for the guidance of the Board to decide the amount of reduction. There is a statutory provision for

the guidance of the Board, and that provision is this. From the value of the produce of his whole land, the landlord will have to be paid on account of current rent, and then he will retain one-half of the balance, and one-half will go for the satisfaction of the creditors. But under the amendment the full discretion is left to the Board. The Board may reduce the amount to any amount, and in reducing that amount the Board will have no guidance, and the Board will at its sweet will, reduce the amount to any amount. So where there is a debt to the extent of Rs. 500, and if the Board considers that the debtor cannot pay more than Rs. 5 a year, then the Board may reduce it to Rs. 50 to be paid in ten years—Rs. 5 a year. There is no hard and fast rule laid down in this amendment. For the sake of uniformity some hard and fast rule must be laid down because there will be hundreds of Boards and if there be no such rule laid down for the guidance of the Boards different Boards may consider differently as regards the paying capacity of the same class of debtors. Considering all these facts I think some such hard and fast rule should be laid down for the guidance of the Boards. The Select Committee after considering all these facts introduced the present provision in the Bill and I do not think there is any reason for Government to go back upon that. With these words I oppose the motion.

Babu KHETTER MOHAN RAY: On a point of information, Sir. May I enquire whether the amendment moved by Mr. Townend is an improvement upon the amendment accepted by the Select Committee? I have not been able to pick up any distinction between the two.

Mr. PRESIDENT: Order, order. I have decided not to put No. 448 at this stage. I propose to take up amendments Nos. 449, 450, 452, 453, 456, 457, 459, 460 to 483, one by one, and if any one of these is carried, the change proposed therein may be incorporated in Mr. Townend's amendment, now before the House, with such alterations as may be necessary. Otherwise, if Mr. Townend's motion is carried the other amendments could not be discussed. The amendments may now be moved in the same order as in the order paper.

Babu PREMHARI BARMA: I beg to move that for clause 21 (*1*) (*a*) and (*b*), the following be substituted, namely:—

"(*a*) directing that such movable and immovable property of the debtor as it may specify in the order, after excluding such land as in the opinion of the Board is sufficient for the maintenance of the debtor, shall be sold forthwith and the proceeds distributed among the creditors in such proportions as the Board may determine; or

(*b*) reducing the debts of the debtor to such amounts as it considers that he can pay within the period mentioned in the order, and directing that the total debt as so reduced, shall be paid by the debtor in equal annual instalments."

Sir, the changes made in clause 21 by the Select Committee are not at all satisfactory, the new clauses (*a*) and (*b*) with the proviso to sub-clause (*a*) as proposed by the Select Committee if retained will not serve the purpose of protecting the agriculturists who are over head and ears in debt. The proviso provides that only one-half of the surplus value of the produce which remain after paying to the landlords the current rent due. Sir, the prices of crops had gone down to the lowest possible level and the landlord had enhanced the rents in most cases to the maximum limit. After paying the current rents to the landlords, the amount which will remain will be very small and if out of this small sum, the agriculturist is to get only one-half it is but absurd to think that he will be able to maintain his family with this little amount. Now-a-days the agriculturists cannot pay the rents with all the amount they get by selling their crops: so it is not at all advisable to earmark the amount which the agriculturist debtor will be able to appropriate for the maintenance of himself and his family.

In the case where the Board will have to declare the debtor to be an insolvent, the Select Committee's proposal is that the Board should keep not more than one-third and not less than one acre of his immovable property for the maintenance of the debtor and his family. Sir, a debtor may have only 15 bighas of land and if he is to be declared an insolvent, then according to the proposal of the Select Committee not more than five bighas of land will be left for the maintenance of his family. The debtor may have to maintain a family of, say, 8 or 10 members. Will it be at all possible for this debtor to maintain his family with these five bighas of land? With a view to meet such cases, it should be left to the Board to decide how much land should be left out for the maintenance of the insolvent and his family. The proposal of the Select Committee is also to fix the minimum of one acre of land only. Sir, is it not absurd to think that with only one acre of land a man can maintain himself and his family I appeal to the Hon'ble Member in charge of the Bill and to the House that if you really wish to do good to the agriculturists and to save them from ruin then do not handicap the Board to decide how much of the land of the debtor it will be necessary to keep for the maintenance of himself and his family. With these few words I commend my motion for the acceptance of the House.

Maulvi SYED MAJID BAKSH: One thing I have not been able to solve. It is said that most of the amendments refer to section 21

as it stands in the Bill. If this amendment is carried then all the references would go out.

Mr. PRESIDENT: What amendment?

Maulvi SYED MAJID BAKSH: There are some amendments, for example, my amendment No. 477: that will be within reference. If that is put to vote and carried then the reference will refer to 477 and the other references will not remain. But there are other references to the sub-sections—they will be entirly different. How will you do that?

Mr. PRESIDENT: Cannot that be done by redrafting Mr. Townend's amendment?

Maulvi SYED MAJID BAKSH: If you allow the references to be changed that is a different matter.

Mr. F. A. SACHSE: The substance of the references will be included in the draft and this will be done by the Legislative Department.

Mr. PRESIDENT: That can always be done.

Maulvi SYED MAJID BAKSH: My amendment will come first and if Mr. Townend's amendment came next then it would be all right. If it is defeated then my amendment will go.

Mr. H. P. V. TOWNEND: We might ask the Legislative Department to draft the amendment.

Mr. F. A. SACHSE: The amendment of Maulvi Syed Majid Baksh is already incorporated in the new draft: he need not move it.

Maulvi SYED MAJID BAKSH: Amendment No. 477 is not covered.

Mr. PRESIDENT: I shall allow you to move your amendment at the right moment. I do not think there will be any difficulty for the simple reason that if any change is effected it can be easily incorporated in Mr. Townend's amendment which has been kept in

abeyance. We have not yet reached any decision with regard to that. If required, it can also be done by certain drafting amendments, or the Council Secretary can possibly do it under the rules.

Maulvi RAJIB UDDIN TARAFDER spoke in Bengali in support of the amendment. The following is an English translation of his speech:—

With all my sincerity I support the amendment No. 450 moved by my friend Babu Premhari Barma. Sufficient provisions ought to be made for the livelihood of the person or persons declared insolvent. I think the Insolvency Act now in force is not so severe as this. People who apply for a declaration under the present Insolvency Act, do so after making provision for their livelihood by means of devices better known to my lawyer friends over here.

I will never believe that a person applying for insolvency will bring his last farthing out of the coat sleeves and add it to his assets, like the "Great Saint". Those who will be declared insolvent by this Act will not know even 5 minutes before the declaration that they are going to be declared insolvent. He will, accordingly, put before the Board all that he possesses, both movable and immovable. Therefore, when he will be declared an insolvent, all that will remain is his homestead and only one acre of land. At present with 15 or 16 bighas of land one has to borrow thousands of rupees to maintain the family. So it is not difficult to presume the plight of the peasant with only 3 bighas of land. I will rather advise the Government to stock a number of begging bags to be distributed among the peasants declared insolvent.

However, I request the Government to examine a matter of such vital importance very critically. The resolution of my friend Premhari Barma is not bad. The Government should support the resolution. The members of the Board will be nominated by the Government, so I believe that it will function quite satisfactorily to set apart provision for the bankrupt.

I hope the Hon'ble Member will accept the resolution.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I would like to point out to the mover and the supporter of this amendment that this is a Bill for giving relief to debtors and not for the repudiation of their debts. This clause, as I have already said, is exceptional. It leaves the dwelling-house and a little bit of land immune from attachment for debts incurred by an insolvent debtor. If we go further and say that sufficient land should be given to a debtor for the maintenance of himself and his family, then there is no limit up to which we can go. Besides that, in the majority of cases, it will be found that there

is very little land that will be given towards the payment of a debt actually. Maulvi Rajib Uddin Tarafder has said that if with 16 bighas of land a man has incurred debts and cannot maintain himself and his family, how is he going to maintain himself and his family with one bigha only; in other words it means that the man should be left with 16 bighas of land. Then, it would mean a complete repudiation of all debts; that is a thing which, I am sure, neither the mover nor his supporters can put forward, viz., that the cultivator should completely repudiate all his liabilities and all his debts. I do not think that the debtors themselves want that. All they want is relief and to be placed in a position so that it may be within their capacity to pay. Therefore, Sir, I oppose the amendment.

Babu Premhari Barma's amendment was put and lost.

Babu HEM CHANDRA ROY CHOUDHURI: Sir, I beg to move that clause 21(*1*)(*b*) be omitted.

My object in moving this amendment is to see that not a parcel of land of the debtor is sold for his debt and at the same time to see that the creditor gets something. In clause 21(*1*)(*b*) it is provided that at least one-third of his land and not less than one acre will be left for the maintenance of the debtor and his family. I think, Sir, there are a number of cases where a debtor has not got more than one acre of cultivable land, and his homestead. Now, Sir, if the creditor is not allowed to sell that land for the realization of his dues, then he won't get anything. There are also a number of cases where a creditor has lent his money on the security of that one acre of land and the homestead of the debtor; that is practically, of all that the debtor has. Now, if under the provision of this clause the creditor is not allowed to have that property, he won't get anything. But if this provision is omitted and only clause 21(*1*)(*a*) is retained, then the creditor may get something and at the same time the property of the debtor will remain intact. The debtor will have to pay half of the balance of the value of the produce after meeting the current rent of the landlord. So, I think, if this sub-clause is omitted, it will harm nobody. The creditor will get something and the debtor also will have his property intact.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, there are obvious difficulties in the way of accepting the amendment moved by Babu Hem Chandra Roy Choudhuri. First of all, if clause 21 (*1*) (*b*) is omitted, and only clause 21(*1*)(*a*) is retained, then it means that the debtor has to pay for 20 years on whatever the amount is; and if he fails in any instalment, then everything belonging to him will be sold up, including his dwelling-house. (BABU HEM CHANDRA ROY CHOUDHURI: But you agreed to that.) Right; but subject to this: option

must be given. If a debtor deliberately chooses to come under clause 21 (*1*) (*a*), I have no objection. He comes with his eyes open, and he prefers that course. He wants to keep his holding and go on paying for 20 years rather than sell it out. People are attached to their ancestral dwelling-house, or holding and they are ready to make some sacrifice for it. I can quite understand that. But if you take away clause 21 (*1*) (*b*), then they will be placed in a very difficult position. They will be forced to accept clause 21 (*1*) (*a*), and if for any reason they fail to pay any instalment all their properties will be sold up, and the dwelling-house and everything will go. So, I think that option should be left to the Board: it is much fairer to both the parties, and I do not think that so far as the creditor's point of view is concerned, it makes any difference whatsoever. In any case, the reduced amount will have to be paid. In the case of clause 21 (*1*) (*a*), it is an amount that will cover twenty years' equated payments. In the case of clause 21 (*1*) (*b*) it will be the sale proceeds of the land that will be put up for auction. So, I do not think that the creditors will suffer in any way; and it is better to give the debtors a choice between these two courses I oppose the amendment.

The amendment was put and lost.

Babu HEM CHANDRA ROY CHOUDHURI: I beg to move that in clause 21(*1*)(*b*), in lines 1 to 4, for the words beginning with "if for reasons to be recorded in writing" and ending with "in clause (*a*)" the following be substituted, namely:

"if the creditor owning not less than 50 per cent. of the total debt does not agree to reduction of debts in the manner specified in clause (*a*)."

Sir, under the existing provisions the discretion of giving relief under clauses (*a*) and (*b*) of section 21 is left to the Board. What I propose is that the discretion should be left with the majority of creditors. It is the majority who will decide what remedy they want, i.e., whether remedy under clause 21(*1*)(*a*) or 21(*1*)(*b*). The reason is very simple and it is this: in the case of 21(*1*)(*b*) those creditors who have lent money on the security of the whole property of the debtor which comprises of only one acre of land and his homestead, they will not get anything at all and I think that it is not at all fair or reasonable that this should be so. It may so happen that the debtor had purchased the one acre of land with the money he borrowed from the creditor and the debtor has enjoyed the property for so long after purchasing it with the creditor's money. Now by the provision of sub-clause (*b*) the creditor will not be entitled to get that one acre of land which the debtor has purchased with the creditor's money. That,

Sir, I think, is most unfair and unreasonable. There is no doubt that the price of land has gone down and so it may be argued that the creditors should also get less than what is their due. But it cannot be reasonably said that they will not get anything, they will not be allowed to touch even an inch of land. Those who have any experience of the condition of the mufassal will bear me out that cases are not few where the debtor has got only one acre of land and his homestead or rather one acre including his homestead which he purchased with the money he borrowed. For instance, a debtor purchased one acre of land for Rs. 1,000 of which he paid out of his pocket Rs. 500 and he borrowed the balance. If the creditor who lent Rs. 500 by way of helping the debtor in purchasing the land be not allowed to touch even an inch of the land for the satisfaction of his debt, I say it will be doing something very unfair and unjust.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I rise to oppose this amendment on the ground that after all this is an insolvency procedure and we are putting it in because it may be that in the opinion of the Board the debtor is not in a position to meet his liabilities and even if he goes on paying he will not be able during his life time to pay off his debts, that is to say, his liabilities are more than his assets. Under such circumstances, action under sub-clause (*a*) or (*b*) will be justified. Therefore the question of consent of the creditor as regards the procedure which should be adopted under (*a*) or (*b*) does not arise. Moreover, I find that the Select Committee has suggested that the usual procedure should be under (*a*) and in case of (*b*) only "for reasons to be recorded in writing if the Board does not consider it desirable or practicable to reduce the debts in the manner specified in clause (*a*), specifying what portion of the immovable property of the debtor," and so on. That shows that the usual procedure should be (*a*) and if it is found for some reason that it is not possible to proceed under (*a*), the procedure under (*b*) will be adopted. But I can assure the mover that both creditors and debtors will prefer (*b*) and the Board will not stand in the way and the question of fifty per cent. will not be a practical difficulty.

The amendment was then put and lost.

Rai Bahadur SATYENDRA KUMAR DAS: I beg to move that in clause 21(*1*)(*b*), lines 5 and 6, for the bracket and words "(including not more than one-third or less than one acre of his land)" the following bracket and words be inserted, namely:—

"(including not more than one-third which shall not exceed one acre of land in any case)."

Sir, a provision of this nature for an insolvent debtor is not justifiable. There is no such provision in the Insolvency Act. The retention of this provision will defeat the object of the insolvency procedure, because with this safeguard the debtors will welcome insolvency. Even if this is retained, it should not be more than one-third which would not exceed more than one acre of land. With this observation I commend my motion to the acceptance of the House.

Babu KHETTER MOHAN RAY: Sir, I support this amendment. It says that the land which should be set apart for the debtor should not be less than one acre and in cases where it exceeds one acre it should be one-third of the property possessed by the debtor and in cases where one-third of the property is less than one acre the Board will set aside at least one acre of land for the maintenance of the debtor. Now, Sir, I think that these two alternative proposals are very mischievous as many of the debtors will try to take shelter under them in order to defeat the claims of their creditors. I have examined some of the settlement records and from them I found that in 50 per cent. of the cases the quantity of land held by the agriculturist exceeds more than 25 bighas, that is to say, generally 8 acres. It is only in some cases that the holding is very small but the number of such holdings is about 15 per cent. If we adopt the one-third rule, then in the case of big holdings the debtors will be allowed more than what he ought to get under the ordinary insolvency procedure as under that procedure no such provision is made. But in consideration of the fact that these debtors are agriculturists, I think some provision should be made but it should not be so as to deprive the creditors of their just dues. Under the provisions of this Bill if you allow one-third of the property to be set aside, in some cases it may be 5, 10, or 15 acres. Three bighas is the standard taken in the Select Committee when we discussed this matter and we came to the conclusion that one acre would be the quantity of land from which a man could maintain himself. Besides, the debtors will have some subsidiary sources of income and they do not depend solely on the produce of the land. In view of these facts, I think the amendment proposed by my friend, the Rai Bahadur, should be adopted. With these words I support the amendment.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, the reason why we have put it in was explained by me in the Select Committee and I may tell the House that the two speakers who have just spoken in support of this both come from Eastern Bengal. It is quite possible that in East Bengal one acre of land may be considered as quite sufficient for the maintenance of a person and his family. But in West

Bengal where the productivity of land is not so good if you restrict it and say that in no case more than one acre will be left, then you will find that you will practically give a person nothing. Therefore, in view of this, I oppose this amendment.

The amendment was then put and lost.

Maulvi SYED MAJID BAKSH: Sir, I beg to move that in clause 21(*1*)(*b*), in line 6, after the word "land" the words "excluding his homestead with dwelling-house on it" be inserted.

There is the scheme of the Act which is before the House and there is an amendment and I do not know whether it has been moved. If you exclude the homestead, then it should be clearly laid down that one acre or one-third portion must be exclusive of the homestead and dwelling-house, or otherwise if it is included in the share to be left to the debtor it will be absolutely useless because no person will be able to cultivate the land on which his dwelling-house stands or his homestead. Therefore, he will not be left with sufficient means. The proviso that I have proposed is very necessary and important.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I think I have met Mr. Majid Baksh more than half way by providing in the amendment which I shall move a little later that one acre will be exclusive of the land occupied by the dwelling house. But so far as the amendment wants that the land on which the homestead is should be excluded I cannot agree.

The amendment was then put and lost.

Maulvi SYED MAJID BAKSH: Sir, I beg to move that in clause 21(*1*)(*b*), in line 6, before the word "land" the word "cultivable" be inserted.

Sir, I cannot understand why a difference is made between a homestead and a dwelling house. The land on which a dwelling house stands includes some land which a person holds as other accessories. If in measuring the three bighas the land on which the dwelling house stands is included then it would be absolutely useless. I do not understand why a difference has been made between homestead and dwelling house because the land on which the dwelling house stands includes some land in which he grows crops and other things necessary. If at the time of measuring one acre—3 bighas—only the site of the dwelling house is included, it would be absolutely useless. If you will add to it cultivable land then of course the land that is cultivable will be included, I mean in that case, the place in front of the dwelling house or shruby or jungly portion of it. In Bengal,

every place where a dwelling house stands there is shruby undergrowth. There are other lands, jungly lands, which are not private, not cultivable lands, and if these lands are included the portion of it which is used along with dwelling house and the other necessary portion, the shruby portion—if these are included in one acre, then much of the land is rendered useless. The benefit which is sought to be rendered to the cultivator by giving him some means for his maintenance will be lost. Therefore at least this should be accepted by the Hon'ble Member that an agriculturist will be given cultivable land upon which he can grow things.

The Hon'ble Khwaja Sir NAZIMUDDIN: I rise to oppose this motion because this will bring about a good deal of complication. I explained why I restricted our provision to dwelling house and one acre of land.

The amendment was put and lost.

Babu HEM CHANDRA ROY CHOUDHURI: I beg to move that in clause 21(*1*)(*b*), in the last line, the words "subject to the provisions of the Act" be added.

Sir, under the existing clause the discretion of specifying order of payment is left to the Board. But we have a clause, clause No. 23, which specifies the order of payment. Now I think there is no reason why in case of insolvent debtor the order of payment should be left with the Board. In case of insolvent debtors also the same order should be followed as in the case of other debtors.

With these words I commend my motion to the acceptance of the House.

The Hon'ble Khwaja Sir NAZIMUDDIN: Evidently the hon'ble member was referring to the provision of clause 23(*1*)(*d*). Government is suggesting an amendment to 23(*1*)(*d*) and when we come to that I hope to be able to satisfy the House that there is justification for the motion. In any case, so far as clause 21 (*1*) (*b*) is concerned, the order of payment will be according to the Act.

Babu HEM CHANDRA ROY CHOUDHURI: It is stated in such manner as the court——.

The Hon'ble Khwaja Sir NAZIMUDDIN: If you will look at 26 you will find that the manner in which the proceeds are distributed, is stated there.

Babu HEM CHANDRA ROY CHOUDHURI: It is redundant.

The Hon'ble Khwaja Sir NAZIMUDDIN: It is not redundant, so far as 21(*a*) is concerned.

Babu HEM CHANDRA ROY CHOUDHURI: It is stated in 21(*1*)(*b*) and not 21(*1*)(*a*).

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I oppose this.

The amendment was put and lost.

Babu HEM CHANDRA ROY CHOUDHURI: Sir, before moving this I want to make a little alteration to this motion. It will read thus –

that after clause 21(*1*)(*b*), the following proviso be added, namely –

"provided that no portion of the immovable property of a debtor shall be exempted from sale for realisation of *arrears of rent* or of a debt secured by that property."

Sir, this alteration is due to motion 508 tabled by the Government. Under the existing clause 21(*a*) the landlords could realise their arrears of rent by selling whole of the property of the debtor tenant because under clause 21(*a*) it is provided that this clause 21 will not be applicable in case of the principal of the arrears of rent. But the Government has tabled a motion No. 508 whereby Government intends to change that provision providing that it will not be applicable to arrears of rent only in respect to the reduction of the amount. But it is not stated that for the realisation of the arrears of rent the whole of the property may be sold. I think it is also not the intention of Government that any portion of the holding should be left out even in case of realisation of arrears of rent and by way of safeguard I have made the alteration as stated.

Then, Sir, in moving my motions 460 and 461 I have given my reason why I am not in favour of excluding any portion of immovable property of a debtor from sale for realisation of a debt secured by that property. My reason is simply this: I have given you an instance of a debtor who has borrowed Rs. 500 and has paid from his own pocket, i.e., another Rs. 500, and with that thousand rupees he has purchased an acre of land and in borrowing that Rs. 500 he has mortgaged the whole of this one acre of land. Now if this creditor be not allowed to touch the property which has been mortgaged to him for

the satisfaction of his dues, I think it will be doing something very unfair on the part of the Government and the legislature. In case of unsecured creditor such a provision may be made because when the creditor made this loan he did it at his own risk. Even if there be not such a provision the debtor could easily sell his land in order to deprive the unsecured creditor but it cannot happen in the case of secured creditor. Now by a stroke of pen we are going to deprive the creditor of his security which he legally got on mutual agreement between the debtor and the creditor.

The Hon'ble Khwaja Sir NAZIMUDDIN: Government are thinking of putting in a short notice amendment to motion No. 487/488 (*Ic*), something on the lines suggested by Mr. Hem Chandra Roy Choudhuri regarding rent, that is to say, that so far as arrear rent is concerned, if it is found that by the sale proceeds of the property all arrears of rent will not be paid then this clause 21(*b*) should not apply. But the Government is not prepared to accept it in the case of secured debts. Rent is altogether on a different footing being the first charge on the land and a portion of the holding cannot be left while the arrear rent has not been paid. But as far as mortgaged property is concerned, as I said in the case of a mortgagor in the ordinary civil court, if a mortgaged property be sold and the proceeds do not come to the amount due, he has to forego that amount. In this case we leave a portion of the property. We do not sell——.

Babu HEM CHANDRA ROY CHOUDHURI: If the whole of the property be one acre of land?

The Hon'ble Khwaja Sir NAZIMUDDIN: There the question will be different. But I do not think 21 (*b*) would apply. But so far as this is concerned and as we are dealing with this, I have got to oppose it, but we are thinking of providing for safeguarding rent in our amendment 487/488. We are just consulting our legal experts on the matter.

The amendment was put and lost.

Mr. H. P. V. TOWNEND: I beg to move that in clause 21(*Ia*), line 2, the words "balance of the" be omitted.

This is merely to fit in the wording of my previous amendment.

The amendment was put and agreed to.

Mr. H. P. V. TOWNEND: I beg to move that after clause 21 (*Ia*) the following be inserted, namely:—

"(*Ib*) when the Board reduces the debts of an insolvent under clause (*a*) of sub-section (*1*), it shall specify in the order what sum

he shall pay in each year towards the settlement of the debts as so reduced and in what manner such sums shall be distributed among the creditors:

Provided that the sum to be paid in each year shall be fixed by the Board at an amount which, in its estimation, is likely, in a year of normal harvest, to leave to the insolvent as provision towards his maintenance one-half of the surplus which remains from the value of the produce of his land after paying to the landlord the current rent due for such land.

(*bb*) When the Board directs the sale of an insolvent's property under clause (*b*) of sub-section (*1*), it shall set aside, as provision towards his maintenance, not more than one-third of the land held by him in his direct possession exclusive of the land occupied by his dwelling house.

Provided that, if he holds less than three acres of land in his direct possession, the Board shall thus set aside not less than one acre of the land so held exclusive of the land occupied by his dwelling house."

I should like to make change, with your permission, in the proviso (*bb*). I would like to insert the word "even" before the words "if he holds less than" in the first line and I would also like, with your permission, to add the following in respect of the amendment which the Hon'ble Member proposes to make and to which he drew attention in his last speech.

"Provided further that no portion of the immovable property of an insolvent shall be exempted under this sub-section from sale for realisation of arrears of rent."

Actually, Sir, even if the amendments which we have suggested are adopted as they stand, arrears of rent are perfectly safe, in the opinion of the Law officers of Government. But we do not want any ambiguity to exist on that point, and so this short-notice amendment is proposed. Perhaps, Sir, it might be moved as a separate amendment and not as part of amendment 488.

Might I explain, Sir? As regards amendment No. 488, I have explained before that practically everything in this series of amendments is meant for purposes of drafting, but here one or two slight changes of substance have been proposed. It will be seen that by clause 21 (*bb*) the Board is authorized to specify in the order what sum an insolvent should pay each year towards the settlement of his debts and in what manner such sums should be distributed. In the Bill as it stood after emerging from the Select Committee the clause read thus—"reducing his debts to such an amount as it considers that he can pay within a period not exceeding twenty years, to be mentioned in the order, and directing that the debts as so reduced shall

be paid in equal annual instalments". That made it appear that the intention was for all debts to have exactly similar treatment—that secured debts should receive the same treatment as unsecured debts, and so on. It would make it appear also that the arrears of rent could not be paid in the first three years, say, before other payments but that they would have to be paid in twenty equal annual instalments. That was never intended, and so this verbal alteration is proposed, to give what was the intention of the Select Committee. Then, in clause 21 (*lc*) it is stated in so many words, that the land to be set aside for maintenance would be "not more than one-third of the land held by him in his direct possession, exclusive of the land occupied by his dwelling-house." There appeared to be some misunderstanding as to the meaning of the words which now stand in the Bill: and this represents the intention of the Hon'ble Member when he accepted the wording which is in the Bill.

Babu HEM CHANDRA ROY CHOUDHURI: No, no.

Mr. H. P. V. TOWNEND: The amendment represents what the Hon'ble Member understood to be the intention of the Select Committee. It is said now that this was not the intention of the Select Committee, but the Hon'ble Member has always understood that to be the intention of the Select Committee. I draw the particular attention of the House to this because it has been said that Government propose in regard to this matter to depart from what was accepted in the Select Committee. There has been a misunderstanding. The other points in the amendment are really all points of drafting.

Babu HEM CHANDRA ROY CHOUDHURI: Sir, I rise to remove some misunderstanding as regards the exclusion of the dwelling house and to say whether that was the intention of the Select Committee, because Mr. Townend now says that it was the intention of the Select Committee to exclude one acre of land exclusive of the land occupied by his dwelling house. That I say, Sir, was not the intention of the Select Committee. Their idea was that it should be left open. The Hon'ble Member told us that in Western Bengal the price of agricultural land is very low and also that the produce of the land was very small; hence, in that part of the province one acre of land may not be sufficient for the maintenance of the debtor. But in Eastern Bengal, where the dwelling house land is more valuable than cultivable land, it would be left to the Board to decide whether the homestead land should be included within the one acre of land or that one acre will be exclusive of the homestead land. That was the reason it has been left vague. Clause 21(*1*)(*b*) specifies what portion of the immovable property of the debtor (including not more than

one-third or less than one acre of land) shall be excluded as provision towards his maintenance, but it is not mentioned whether this one acre of land will be inclusive of the homestead land or exclusive of it, due to the fact that in different parts of the province different conditions prevail. In some cases, it may be necessary to include the homestead land, whereas in other cases it may be necessary that the homestead land shall be exclusive of the one acre of land. As I have said already, it may so happen that a debtor has got very little more than one acre of land. The Board may, under the provision as it stands, decide that the land excepting one acre, inclusive of the homestead, left for the maintenance of the debtor, will be sold for his debt. But if it is laid down that not only one acre of land but also the homestead will be exempt from sale, then it may so happen that great injustice will be done to the creditor because the value of this one acre of land and his homestead may be so much that in all fairness and justice it should not be left to the insolvent debtor. Sir, in the case of an insolvent debtor it cannot be expected that he should be allowed to live as comfortably as an ordinary man. So, considering all these facts it was left to the discretion of the Board whether the homestead will be included within one acre or it will be exclusive of one acre. I have already said, the number of cases in which the debtors have not got more than one acre of land is not few and if you leave out the homestead with one acre, then in a great number of cases the creditors will not get anything at all. The Hon'ble Member in charge objected to my amendment No. 482 which applied only to secured creditors. As I have already said, the cases where the debtor has borrowed on the security of his whole land which is only one acre are not few. So if the debtor is allowed to retain one acre exclusive of his homestead, in many cases his position will be much better than that of his creditors as there are many creditors who have not got even an inch of land and who live on the interest they realise from their money-lending business. These people will be deprived of a greater part of the money they have lent out. So, by accepting this amendment you will be reducing the creditor to a position which will be more miserable than that of the debtor. With these observations, Sir, I oppose the amendment.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I admit there has been some misunderstanding about this amendment. That there has been some misunderstanding is obvious from the fact that Babu Hem Chandra Roy Choudhuri has throughout his speech said that this one acre is inclusive of the homestead, whereas we have actually provided not "homestead" but "dwelling house." There is therefore this difference and it is a vast difference. In our amendment the insolvent debtor gets one acre *plus* his dwelling house. Mr. Townend has

given his reasons why we are moving this amendment and the point which Hem Babu has raised is due to a misunderstanding, though it may be that he is wrong or that we are wrong; but the fact remains that there is this misunderstanding.

Mr. S. M. BOSE: Sir, without going into what happened in the Select Committee, which we cannot do, may I say from what the Hon'ble Member has just said that these are very extraordinary provisions? Ordinarily, under the insolvency law, the insolvent debtor does not keep anything at all—every inch of his land is sold up. But here we think that some portion of the debtor's land should be left to him because it is not desirable that a man should be left without any land- and landless men are dangerous to society. So we quite agree that some land should be left. I think we could have no objection to one-third of an acre being left, but if it is proposed to increase that amount by including therein an exception that land occupied by a man's dwelling house should also be excluded, this is not at all a desirable provision. I think the one-third ought to include the land occupied by the dwelling house. I am told, Sir, that one acre of land is not at all a negligible amount and there seems no reason why in addition to one acre the debtor should keep the land occupied by his dwelling house. I, therefore, oppose the amendment.

The amendments were put and agreed to.

Mr. H. P. V. TOWNEND: Sir, I beg to move that in clause 21 (*1*), from line 8, for the words beginning with "pass an order declaring" and ending with "in such manner as the Board may direct" the following be substituted, namely:—

"by a written order declare him to be insolvent and may by such order either-

(*a*) reduce his debts to such amounts as it considers that he can pay within a period, not exceeding twenty years, to be mentioned in the order, or

(*b*) if, for reasons to be recorded in writing, it does not consider the reduction of his debts under clause (*a*) to be desirable, direct that, subject to the provisions of sub-section (*1c*) and of section 22, all his property shall be sold and the proceeds shall be utilised towards the payment of his debts in such manner as may be specified in the order."

The amendment was put and agreed to.

Mr. PRESIDENT: Order, order. The Council stands adjourned till to-morrow at 2 p.m. on Wednesday, the 11th December.

Adjournment.

The Council was then adjourned till 2 p.m. on Wednesday, the 11th December, 1935, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Wednesday, the 11th December, 1935, at 2 p.m.

Present:

Mr. Deputy President (Mr. RAZAUR RAHMAN KHAN) in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers and 86 nominated and elected members.

STARRED QUESTIONS

(to which oral answers were given)

Commutation of pension.

*20. **MUNINDRA DEB RAI MAHASAI:** (*a*) Will the Hon'ble Member in charge of the Finance Department be pleased to lay on the table a statement showing—

(*i*) how many applications for commutation of pension were outstanding at the end of 1934;

(*ii*) how many were received up to the end of October, 1935;

(*iii*) how many applications have been received from retrenched officers;

(*iv*) the amount involved in the applications pending on the 31st October, 1935;

(*v*) the amount paid up to the 31st October, 1935;

(*vi*) the amount which is expected to be paid before the close of the financial year; and

(*vii*) the date of the last application disposed of on the 31st October, 1935?

(*b*) What is the estimated amount that will be required for meeting all the pending applications?

(*c*) Is it proposed to provide the whole amount in next year's budget? If not, why not?

(*d*) Is the Hon'ble Member aware that retrenched officers have been given priority in the grant of commutation of pension by the Government of India and the Governments of Assam and Bihar and Orissa?

(*e*) Will the Hon'ble Member be pleased to state the reason why this principle is not followed in Bengal?

MEMBER in charge of FINANCE DEPARTMENT (the Hon'ble Sir John Woodhead): (*a*) (*i*) 1,323.

(*ii*) 208.

(*iii*) The information is not readily available, as the registers of applications do not furnish it.

(*iv*) Approximately Rs. 51,54,000.

(*v*) Up to the 31st October, 1935, Rs. 3,25,000 have been sanctioned for payment. During the same period (April to October, 1935) applications involving the sum of Rs. 3,59,000 have been otherwise disposed of by reason of medical considerations, death or withdrawal of applications.

(*vi*) Budget provision of Rs. 12 lakhs has been made this year, and it is expected that the available balance, viz., Rs. 8,75,000 will be paid out this year.

(*vii*) The 13th February, 1931.

(*b*) It is not possible to estimate this figure with accuracy, but to dispose of all applications pending on the 31st October, 1935, approximately Rs. 30 lakhs will be necessary.

(*c*) No: because it will be impossible to deal with all the outstanding applications within the year.

(*d*) Government have no such information.

(*e*) The policy adopted is that cases are taken up according to priority of application. Government consider this the most equitable method, and are not prepared to depart from it.

UNSTARRED QUESTIONS

(answers to which were laid on the table)

Howrah-Sheakhala Light Railway.

7. Mr. P. BANERJI: (*a*) Is the Hon'ble Minister in charge of the Public Works (Railways) Department aware that there is no latrine in the female waiting rooms between Uttarbantra and Sheakhala stations except at Kalachara on the Howrah-Sheakhala Light Railway?

(*b*) If the answer to (*a*) is in the affirmative, are the Government considering the desirability of urging upon the railway authorities to take steps in the matter?

MINISTER in charge of PUBLIC WORKS (RAILWAYS) DEPARTMENT (the Hon'ble Nawab K. G. M. Faroqui, of Ratanpur): (*a*) Yes.

(*b*) In the absence of applications from the public for additional latrines it was not found necessary to provide more. The Railway, however, have agreed to provide more latrines as funds permit.

Mr. P. BANERJI: In view of the answer (*a*), given by the Hon'ble Minister, why has he mentioned "additional latrines," when there is no latrine at all in female waiting rooms?

The Hon'ble Nawab K. G. M. FAROQUI, of Ratanpur: So far as I know there are latrines, and there is one at Kalachara.

Maulvi SYED MAJID BAKSH: With reference to answer (*b*), am I to understand that people must restrain themselves until funds permit?

(No answer.)

Mr. P. BANERJI: With reference to answer (*b*), will the Hon'ble Minister be pleased to state whether the application is to be made to Government, as the public have already made numerous applications to the Railway authorities concerned without any result?

The Hon'ble Nawab K. G. M. FAROQUI, of Ratanpur: The application should be made to the Managing Agents, and not to Government.

Mr. P. BANERJI: In view of the fact that applications have already been made to the Managing Agents without avail, does the Hon'ble Minister still insist that application should be made to the Managing Agents?

The Hon'ble Nawab K. G. M. FAROQUI, of Ratanpur: I have nothing more to add.

Process-servers.

8. Maulvi ABDUL HAMID SHAH: (*a*) Will the Hon'ble Member in charge of the Judicial Department be pleased to lay on the table a list of the process-servers of the Chittagong Sadar who were deputed to the houses of judicial and ministerial officers during the last Puja holidays showing against each—

(*i*) the number of days they were on duty there;

(*ii*) the nature of the duties they performed; and

(*iii*) the periods of time they were daily required?

(*b*) Will the Hon'ble Member be pleased to state whether in the case of any of these deputations there was a violation of the orders contained in the Judicial Department letter No. 3954-3974, dated the 10th May, 1935?

(*c*) Are the Government considering the desirability of taking steps which would stop the practice of engaging the process-servers on duties not connected with process-serving, on the lines recommended by the special officer appointed to enquire and report on the reorganization of the process-serving establishment?

MEMBER in charge of JUDICIAL DEPARTMENT (the Hon'ble Sir Brojendra Lal Mitter): (*a*) A list is laid on the table.

(*b*) No.

(*c*) The member is referred to the answer given to a similar question put by him—unstarred question No. 1 (*c*)—asked in this session of the Council.

List of process-servers of Chittagong who were deputed to the houses of judicial and ministerial officers during the last Puja holidays, referred to in the reply to clause (a) of unstarred question No. 8.

1. Prasanna Kumar De—

(*i*) 5 days (from 27th September, 1935, to 1st October, 1935).

(*ii*) Official business—carried dâk from the Judge's bungalow to the Head Clerk's house.

(*iii*) 2 hours daily in the morning.

The following process-servers were on guard duty at night at the Judge's bungalow under his orders when Mr. Masih, the Vacation Judge, was out during criminal holidays, as there were confidential papers and other records there:—

1. Sariatulla.
2. Rashidulla.
3. Manir Ahmed.
4. Ali Ahmed Chowdhury.
5. Aparna Charan De (*i*).
6. Mohendra Chandra De (*iii*).
7. Basarat Ali.
8. Ali Ahmed.
9. Ali Meah.
10. Annada Charan De (*ii*).
11. Haralal Das.
12. Mahamad Ismail.
13. Ramani Mohan De.

Each for one night from 1st October, 1935, to 13th October, 1935.

NON-OFFICIAL MEMBERS' BUSINESS

RESOLUTIONS

on matters of general public interest.

MUNINDRA DEB RAI MAHASAI: "This Council recommends to the Government to prepare a comprehensive scheme at an early date and raise a loan to save the province from the scourge of malaria and other preventible diseases within the next ten years."

Sir, I beg to move the resolution that stands in my name. At the outset, I think it better to inform the Hon'ble Minister of Public Health that in moving this resolution it is far from my intention to belittle the useful work that is being done by his department with the limited resources at its disposal.

I think this House will agree with me when I say that malaria is the principal scourge of Bengal. It is eating into the vitals of the nation. It was not so before. Three-quarters of a century ago Bengal was a flourishing country not only in wealth but also in health. The introduction of railways synchronised with the outbreak of epidemic fever in Bengal. The reason is not far to seek. The insufficiency of culverts under railway embankments impeded the natural flow of water during the rains which turned healthy places into pestilential areas. Jessore, Nadia, Hooghly and Burdwan were the worst sufferers where more than half the population were swept away by the fell disease and since then malaria has got a strong-hold in many districts in Bengal and has wrought havoc in the countryside. I personally made a tour in the interior, even in the most inaccessible parts, of my district to see for myself the actual state of affairs in the villages. What I saw would stagger humanity. In each homestead or hut visited by me I found all members of every family suffering from malarious fever, emaciated, thin-limbed with enlarged spleen, pale anæmic ghost-like in appearance—some trembling, others tottering, without the least vitality left in them—a splendid specimen of degenerated and deformed humanity—a pathetic sight which I can never forget in my life. This I saw not in one particular village but in most of the villages I visited. There was repetition of the same sight everywhere. Almost the whole countryside looked like deserted villages, full of jungles and shrubs and insanitary *dobas* with ruins of deserted homesteads. Once populous and flourishing villages like Satgaon, Tribeni, Pandua, Mahanad, Deberbashini, Dhaniakhali, Balagarh and hundreds of others in my district have worn a desolate appearance. Halisahar, once the pride of Bengal, Kanchrapara and other famous places have dwindled down into insignificant hamlets through the ravages of malaria. I can name

hundreds of such villages, but I refrain from doing so as their number is legion. In my district not only the railway embankments but the high embankments on the eastern side of the Damodar are also responsible for this deplorable state of things. Formerly, before the construction of the embankments, the flood water of the Damodar used to flush a great part of the district and to carry away all impurities, depositing red silt which fertilised the soil and filling the rivers, rivulets, tanks, *khals* and *bils*, which the district possessed in abundance, with flood water. The stoppages of egress and ingress of flood water have not only deteriorated the fertility of the soil, but have helped to turn them into pestilential areas carrying death and desolation all around. The harrowing tales of devastation of the countryside by the ravages of malaria or other preventible diseases are too well known to need recounting.

Of course, the Public Health Department of Government are not sitting idle, but are doing as much as is possible for them to do with the inadequate funds placed at their disposal by the Finance Department. There is the Director of Public Health with a good many Assistant Directors, Publicity Officers, and contribution is made to the district boards for the maintenance of Health Officers and Sanitary Inspectors. The latter devote a good deal of their time in filling up two dozen forms prescribed by the department. It is true, statistics are essential to form data, but if the lengthy and intricate forms were simplified, they could utilise more of their time in looking after the health of the uncontrollably large areas over which they are put in charge. Government also is not unmindful in the matter of affording relief in the shape of placing quinine within easy reach of people and distributing it at cheap rates or sometimes free of charge. These, of course, do some good to the poor people. But, Sir, I verily believe that quinine alone cannot save the nation—it can prolong the agony but cannot achieve remedial cure.

It is for this reason that I have tabled this resolution. If we have to live we must live like men. A nation of weaklings can neither prosper nor achieve success in any walk of life. Dominion Status or Constitutional Reforms, or Swaraj, whatever appellation is given to these high sounding terms, would have no meaning to a nation of weaklings.

Sir, malaria, kala-azar, cholera and such other preventible diseases can be checked and prevented for all time if proper steps are taken to do so. Of course, lots of money are required to eradicate the evil from the land. The financial resources of the provincial Government are so limited as would not be able to undertake drastic measures to cope with the magnitude of the task. But unless adequate measures are taken in the near future, there is little hope for saving the countryside

from death and desolation. I have, therefore, in this resolution proposed the floating of a loan to rid the country of malaria and other preventible diseases. The poverty of the Bengal Government has become chronic and it is idle to expect them to combat these preventible diseases on a gigantic scale. The way in which things are being managed can never rid the country of the untold sufferings of victims of such diseases as can be prevented by spending money in the right direction. Recently I had been to Europe and visited some places which were once notorious for insalubrious climate, being the hot bed of malaria and other preventible diseases, and these have now become health resorts. Government of those countries spent money like water for this purpose and have been successful in ridding the country of those fell diseases. The pestilential areas have, through unstinted efforts, been converted into healthy places. This has led me to hope that if sincere efforts are made, and if adequate funds are available, Bengal may yet be saved from the monster which has wrought havoc in the countryside. I should, therefore, beseech the Government to rise equal to the occasion, to raise adequate loan and to rid the country from the scourge of these terrible diseases which are undermining the health of millions of people placed under their charge.

As it is a question of life and death to the nation, I should also like, in the name of humanity and in the name of all that is great and good, to fervently appeal to Sir Bijoy to take up this matter seriously in order to save his countrymen from untold sufferings, decay and death and thereby earn the everlasting gratitude of generations yet unborn. May God help him.

Maulvi ABUL QUASEM: Sir, I rise to give my wholehearted support to the resolution which has been so eloquently and ably moved by my esteemed friend, Munindra Deb Rai Mahasai. I congratulate him on the good fortune which the ballot box has given him by placing his resolution first in the list. Sir, it is entirely in the fitness of things. If any scourge requires to be removed without any loss of time, if Bengal is to survive, it is undoubtedly this scourge of malaria. The picture that the Rai Mahasai has drawn of the people of his district is a picture which may be seen in almost every district of Bengal, and in my own district of Khulna in particular. Mr. Amulyadhan Ray says, in Jessore also, but I hope he will have his say in the matter later on. Further, Sir, I have a particular reason to support this resolution, as I come from a subdivision in which two thanas have recorded in the last Census Report a decrease of population due to malaria and kala-azar in the course of the last ten years and more. It can be seen, Sir, that the last Census Report, prepared by Mr. Porter, has recorded a decrease of population in two thanas in the Satkhira subdivision, namely, Satkhira and Kalarra, and the cause is given as the dying and decadent condition of certain rivers and water channels. Sir, the

problem of malaria cannot wait any longer. I recognise that Government in their own way have been attempting to deal with this problem. Without duly disparaging what Government have so far done and are doing, I must say with all the emphasis that I can command that what they have done amounts to nothing but a tinkering with the problem. The problem is a huge and stupendous one, and what are the Government doing after all? Government have been distributing some quinine free and have been giving grants-in-aid to district boards to establish dispensaries. Government have also been distributing kala-azar specifics, but I am not sure if Government have at all realised the hugeness of the problem. Then, Sir, Government resorted to a novel procedure some time ago. About two years ago, the Hon'ble Minister in charge of the Public Health Department told us in this Council that in a certain thana in the Burdwan district a new experiment was being tried, and a particular drug was being orally administered to all the inhabitants of that thana, and that Government would watch the results with particular interest. Then, last year, we were told that the experiment had got to be repeated in that thana another year, and we have not yet been told publicly what the result of that experiment has been. If that experiment has been a success, let us be told so publicly and also whether Government want to extend the experiment to other malaria-ridden localities. In my humble opinion, the way in which the problem is being dealt with, leaves everything to be desired. Sir, the problem cannot be effectively handled out of the current revenues of Govrnment. That has been the opinion of experts. Munindra Deb Rai Mahasai has rightly suggested that Government should raise an adequate loan in order to finance any effective scheme of anti-malarial measure. There are different localities where the problem has got to be approached in different ways. I come from a locality, Sir, where the problem is one of water-logged *bils* and of dying and decadent water channels. Unless these water channels are allowed to flow freely and the *bils* drained properly, there is no chance of malaria being appreciably diminished in my part of the province. Only in the last session, Sir, Government got through this Council a measure which is now known as the Bengal Development Act, but so far as my district is concerned, I was told in this Council that my district would not get any benefit from that measure. I do not know how long my district would have to wait to receive the benefits of any effective anti-malarial measures. I have already said, Sir, that I belong personally to one of the thanas in Satkhira subdivision where in my village in the course of the last ten years one-half or three-fourths of our young men whose ages ranged from 15 to 25 years fell victims to the scourges of malaria and kala-azar. The picture is awfully sombre and gloomy. Unless Government adopt schemes which will apply all over Bengal in a comprehensive and exhaustive manner, there is no chance of any appreciable benefit resulting therefrom. The measures that Government have been taking have

not achieved any tangible results. Malaria is having its toll in larger and larger numbers year after year, and there is nothing to check the ravages of this fell disease. Then, Sir, kala-azar is also having its fearful toll. I have got a statement from the Health Officer of my district showing that the figure for malaria patients up to October this year is twice as much as it was for the whole of last year. The same is also the case with kala-azar patients. It is in this way, Sir, that havoc is being wrought in my district. The measures adopted by Government so far have not in the least been able to check the spread and onrush of these terrible scourges. It is extremely desirable that Government should take up in right earnest a scheme of a comprehensive character to deal with this problem. If some such scheme is not adopted without further delay, I say that the greater part of Bengal will be converted into uninhabitable places and jungles within a short time. It has been said that the Bengal Development Act, when put into operation, will be able to convert such uninhabitable places into flourishing ones once again. Unfortunately, Sir, that Act, I have been told, would not help my district in any way. I put this question, Sir—and I put it seriously and most earnestly—to the Hon'ble Minister in charge of Local Self-Government, what would be the fate of my district and of my subdivision, if no effective measures are taken there in the near future, especially as the census figures show that the population there is decreasing rapidly on account of the ravages of malaria. Munindra Deb Rai Mahasai has asked Government to raise a loan in order to save the province from the scourge of malaria and other preventible diseases. I submit we should not fritter away our energy and our money on a number of diseases, but malaria and kala-azar are the scourges which should be taken up first, and that in a comprehensive manner—in a manner which would be really effective in eradicating those terrible scourges. They are, according to the highest medical opinion, preventible diseases. Unless improvement from the sanitary point of view, and from the point of view of drainage, is effected in rural areas, there is little or no chance of malaria disappearing from places where it has been raging so furiously and for such a long time. I make an appeal most earnestly to Government to come to a solution of this problem, and also come forward with a proposal for an adequate loan for financing a well-thought-out scheme for eradicating this scourge.

Sir, I wholeheartedly support this resolution.

Rai Bahadur SATYENDRA KUMAR DAS: Mr. President, Sir, I trust the hon'ble member who has sponsored this resolution, and others who agree with him, will not be considered as given to easy ways of thinking, and temperamentally inclined to lightly turn to the Governmental machine for the removal of all ills from which Bengal at present suffers. Personally, I think Government is quite alive to the

havoc caused annually by the deadly malaria peril. Malaria control evidently involves two sets of activities—(1) research work in relation to which the records of the School of Tropical Medicine and the All-India Institute of Hygiene including the Public Health Department establishment of the Malaria Research Bureau, would show that valuable addition was being made to the store of human knowledge in malaria-transmission from year to year, and (2) field work. In this sphere also cautious schemes are being promoted by Government in several parts of the province. On the other hand, the brilliant examples set by Rai Bahadur Gopal Chandra Chatterjee with his Co-operative Anti-malaria Societies and by the late Rai Bahadur Nogendra Nath Banerjee in his Birnagar Palli Mongal Samiti, will not merely serve as a beacon light to others, but demonstrate the capacity of the people of this province to organise humble human resources for helpful constructive work. Though quantitatively small, the small measure of relief obtained so far ought to stimulate Government and local communities to efforts on a progressively bigger scale. It may be some relief to realise in this connection that malariologists in Bengal are not sharply divided into "wet" and "dry" camps, but huge resources seem to be necessary to tackle this urgent problem, and this in a province where malaria would not have obtained such an effective foothold, but for the destitution of its people. The question of additional revenues necessary for this purpose will likely involve the assessment of fresh taxes, and collection of fresh taxes will, I am afraid, hardly help in immediately raising the standard of living of the people, a condition considered by experts to be an essential weapon for fighting malaria. This complication by the economic factor leaves the malaria problem in Bengal in the position of a dog chasing its own tail. While our people dwelling mostly in mud-walled huts may not have the stamina or the grace to lead "anti-malarial lives," Government coffers seem to be empty for adequate expenditure in this connection. If we have to wait for better times to come, we must be prepared to walk through destruction to eternity. If the Dutch "Polders" or the Italian "Bonifica" schemes offer any solution to the problem, may I suggest that Government will appoint a committee of experts in malaria, agriculture and economics for suggesting measures that may be adopted in the special circumstances of Bengal for dealing with this deadly peril of malaria on lines which will secure immediate removal of the scourge, and ensure without undue harassment the repayment of the necessary loan within a measurable time, say, 30 years?

Maulvi TAMIZUDDIN KHAN: Sir, the House has had the pleasure of hearing our veteran friend, Munindra Deb Rai Mahasai, after a long time. Practically this is the first time that we are hearing him after his return from Europe. He had been to Geneva, and I think on his way back home, he has taken a leaf out of the book of Soviet

Russia, the country of organised plans and schemes on a five-year or ten-year basis,—plans for agricultural improvements, plans for industrial improvements, etc. We are glad to find that Munindra Deb Rai Mahasai has advocated a ten-year plan for eradicating malaria and other preventive diseases from Bengal. It is no doubt a very good proposal, and it has the wholehearted support of all well-wishers of the country. But the question is how to give effect to his plan. Before I go further into his proposal, I should like to say that our Government are in the habit of putting the cart before the horse in almost every important problem that it has to deal with. Sir, that Government experimented on co-operative societies in Bengal without giving the people the elementary education in co-operation, which presupposes some elementary primary education. As that was not given, the movement has practically proved a failure. Similarly, if any organized plan of sanitation and of eradication of disease is to be successful in Bengal, I think the first prerequisite should be the introduction of free and compulsory primary education. Everyone knows how difficult it is to instil the principles of sanitation and hygiene into people who are weltering in ignorance, and who cannot be taught anything about these things except from the platform. Primary education, Sir, is a thing which is a prime necessity for this province. But Government has been very slow and reluctant to give effect to the Primary Education Act which was passed by this House some years ago. I submit that without primary education no scheme of sanitation is likely to be successful in this country.

Then, the Rai Mahashai has said that in several countries in Europe malaria "flowed" like water, but those countries have now been purged of it by the organized efforts of the Governments of those countries. I believe it is so, Sir. But the Rai Mahasai must admit also that in all those countries the people were not so ignorant as the people in Bengal are. I also believe that they must have had primary education before these things could be made successful in those countries.

Secondly, I believe, money also flowed like water in those countries of which my friend has spoken. It is all very well to say that a ten-year plan should be framed and then a loan should be floated for working out that plan. If that is possible, Sir, I have no objection. But I submit that, without working out a plan which is likely to be successful, without adequate experimentation, Government should not launch upon any large scheme for floating any loan. That I think will be disastrous. Maulvi Abul Quasem has already referred to the attempts made by Government to fight malaria in certain areas in the Burdwan district. I fully agree with him that Government should lay before the House and the public the results that have been obtained from that experiment. I do not think, Sir, that that experiment has proved

altogether successful, although I do not deny that some substantial results must have been obtained. Malaria is a disease which is certainly preventible, but it is not easy to fight a disease like that. We know, Sir, that there are several kinds of malaria prevalent in this country. In certain areas of this province we find that a peculiar kind of malaria breaks out, to which the doctors give the name of malignant malaria, and many of the doctors admit that there is no sure remedy for that type of malaria. My object in saying this is that Government should, first of all, carry on an extensive and intensive experiment about how to fight malaria, and if those experiments actually prove successful, and if actually schemes are framed which are likely to be successful, I would wholeheartedly support the raising of a loan. But before such a scheme could be framed and before satisfactory results were obtained from experiment, it would be futile to waste good money after bad schemes. Money is not flowing like water in Bengal. For want of money many useful things are not being done, and I think, Sir, that before any big scheme involving a large expenditure is taken up, Government should spare no pains to work out a really good and effective scheme.

(At this stage the Chair was vacated by the Deputy President and was occupied by the Hon'ble the President.)

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Sir, I am very much disappointed at the speech which my friend Maulvi Tamizuddin Khan has just delivered. It shows that he does not know that other countries in Europe—and especially Italy—which were full of malaria before have now been absolutely freed from this scourge. If he does not know that, that should not be a reason for his disbelieving, or casting reflections on the opinions expressed by those who know. The problem of malaria is one which requires immediate solution. My friend Maulvi Tamizuddin Khan has said that unless the Primary Education Act is immediately given effect to, what is the good of spending money for the eradication of malaria. He also said that malaria is due to want of education. But, Sir, I can tell you that during the last month the Deputy Commissioner of Jalpaiguri, the Civil Surgeon of Jalpaiguri, the Subdivisional Officer of Jalpaiguri, and other officers there were attacked with malignant malaria. Are they uneducated? Will anybody say that they do not know the elementary principles of sanitation and how to combat disease? It is not the want of education, as my friend has understood it to be, that is the cause of malaria. It is some poison or some insect that is actually responsible for this vile disease. If you can get rid of these insects—they are called mosquitoes of some type—then and then only you can get rid of malaria. That type of mosquito breeds especially in that area where you have got tanks without a special sort of fish, and *bils* without any flow from

them—where stagnant water accumulates—without some sort of fish that ought to be in it. If you can get rid of mosquitoes from certain areas, you can get rid of malaria absolutely. One way of eradicating malaria is inundating the country. Italy has succeeded in driving out malaria simply by inundating the country at regular intervals and getting rid of all mosquito-breeding places by filling in tanks and undesirable excavations. If these things are done here, it would also be possible to eradicate malaria, and I can tell you, Sir, from my own experience of the district which I represent, as well as of the Terai, which is not under the Reforms scheme, where malaria and other diseases are allowed to roam wantonly. There is no person in this House who is responsible for that area, who seems to care anything about what is happening in that part of the country. Sir, the Terai is the most malarious part of that area, where the birth rate is 15 and the death-rate is 75. Well, one can well ask how can there be people living at all in an area where the death rate is 75 and the birth rate is only 15. The fact is that people are dying there of malaria and other diseases, and new recruits are coming there from other parts of the country and occupying their places and themselves dying in their turn. I personally wrote to the Director of Public Health to depute a man to that area to find out if it was possible to reduce the death rate in that area some four years ago. The Director of Public Health replied that he would try to do so, but unfortunately, Sir, no man has as yet cared to go there and to inquire even whether it was possible to improve the sanitation of the place, although I gave an undertaking that in certain areas if a workable plan could be given I would personally find the money. But, Sir, even though I was willing to spend the money, I was not allowed to have a scheme by the department. Is it not, Sir, gross negligence on the part of the department concerned? So when my friend the Rai Mahashai says that there should be schemes for all this, I know it will be treated exactly in the same way as my own request for a scheme was treated. In that matter there was no question of finance involved; finance was going to come from a tea-garden of mine which was in a desperate condition. I said that the tea-garden would provide the finance for eradicating and combating malaria in that area. The Rai Mahashai now asks merely that a scheme should be prepared. Why is it necessary that so much argument must be used to convince Government that a scheme is necessary? There may be people and societies who would like to have a scheme and who may have tried to eradicate malaria from their areas. It is only when a scheme is prepared that the question arises of sufficient finance being provided by Government, to allow the scheme to be carried out. Sir, Mr. Tamizuddin Khan says Government spent a lot of money in Burdwan without much effect—although he did not say this in so many words, but that is the substance of what he said, and he does not think that there is any reason why Government should spend any money

for a purpose like this. I say, Sir, that because a particular medicine which was tried in Burdwan did not have as much effect as Government expected, there is no reason why it should not be tried elsewhere. As far as I know in my own district of Jalpaiguri plasmo-quinine with which Government experimented is being used by the people and with very good effect. I know that if we go to a malaria-stricken place after taking plasmo-quinine we shall come back without being attacked with malaria. I do not know, Sir, what the Hon'ble Minister will say, but I do not think that the experiment at Burdwan has proved a failure. When we say that a scheme is to be prepared we do not say that it should be experimented with a particular medicine. What is wanted is that in different places different experiments are to be made. If inundation is possible in some places where there are rivers flowing, let it be attempted there. I believe in North Bengal where there are so many rivers at the foot of the hills inundation is possible. Some times every year attempts are made to form a *bund* to have the place inundated, and I think that is one of the many ways of eradicating malaria, and I think that is the most effective way. No doubt, there are other ways of eradicating malaria, but it is for the experts to say which is the best way. When my friend, the Rai Mahasai, suggests that a loan should be floated for the purpose of giving effect to a scheme for eradicating malaria, I think there is a good deal of sense in it, but I think the scheme should be placed first before the people at large for discussion and also before the Council and when it is acceptable to all of us, then money ought to be provided either by a loan or by Government. With these words I wholeheartedly support the resolution of my friend, the Rai Mahasai.

Rai Bahadur SATYA KINKAR SAHANA. Sir, I wholeheartedly support the resolution of my friend, the Rai Mahasai. The resolution is so very clear and it has been placed before us with such force that no more words are required for its support. I think that both Mr. Tamizuddin Khan and Nawab Musharruf Hosain delivered long speeches without reading the resolution. The resolution runs thus:—

"This Council recommends to the Government to prepare a comprehensive scheme at an early date."

Therefore, the preparation of a comprehensive scheme is the first step recommended by the resolution, and I think it was not the intention of my friend, the mover, that the scheme would be prepared in this House and he did not say whether plasmo-quinine or the flooding of the country would relieve the country of malaria; he left that question to experts. I think, Sir, the speech with which the Rai Mahasai introduced his resolution was perfectly clear and after that no more words are necessary to commend it. Sir, I wholeheartedly support the resolution.

Rai Bahadur KESHAB CHANDRA BANERJI: Sir, there cannot be two opinions with regard to the importance of the resolution moved by my friend Munindra Deb Rai Mahasai. This is not the first occasion that such a resolution has been brought before the House for consideration. Times without number have we cried ourselves hoarse over the inauguration of measures for the relief of the suffering people of this unfortunate province. Sir, in European countries and in the United States of America, stern measures are being taken to deal with the ravages of malaria and other preventible diseases, but the Government of this country for reasons best known to them have relegated the vital problem of public health to the background. During the last few years legislative measures have been passed such as the Bengal Money-lenders Act, the State Aid to Industries Act and so on and the Council at the present moment is engrossed in discussing the Bengal Agricultural Debtors Bill and other measures of a similar nature; but what useful purpose will be served by such enactments if we cannot save the dying millions of Bengal? May I ask the Government as to what has been done—unfortunately, I find that the Members of the Reserved side are now absent from the Council Chamber—to deal with the scourge of malaria and similar other fell diseases which take a heavy toll of human lives every year in this hapless province of ours? While the Governments of other countries consider the question of public health and sanitation as of paramount importance to the nation, our Government do not seem to realise the seriousness of this problem. If the foreign nations could, by determined action, stamp out preventible diseases from their countries, there is no reason why the Government of this country cannot adopt well-thought-out measures to root out these evils. Sir, the resolution makes a very modest demand; it requests the Government to prepare a comprehensive scheme and to raise a loan to save the province from the scourge of malaria and other preventible diseases within the next ten years. Properly speaking, the provincial Government have not so far formulated any workable scheme to combat such maladies. If I remember aright, in America, Germany and France, schemes are prepared, estimates made of the cost involved therein and the amount estimated is spread over a number of years. But here nothing is done in a business-like manner, there is no scheme and whatever little action is taken it is of a desultory and half-hearted character. I can say from my experience of the conditions prevailing in the mufassal that the small amounts that the district boards provide in their respective budgets for dealing with diseases like malaria, cholera and small-pox are very inadequate in view of the magnitude of the problem; and for want of adequate funds the district boards are content with distributing cinchona febrifuge in place of quinine among the people affected by malaria. Sir, nowadays we hear the names of many diseases which were hitherto unknown in this country, such as beri-beri, etc. Several theories have no doubt been propounded as to

the cause of this disease, but nobody can aver with any amount of certainty that these theories are based on a correct analysis of the disease. Then again, a considerable difference of opinion exists in the matter. In Western Bengal, districts like Burdwan and Jessore are very badly affected by malaria; in my own native district, the subdivision of Manikganj is no less affected, although the remaining portion of the district has so far been immune from this scourge. Sir, I hope that the modest demand made by the Rai Mahasai will not go unheeded. I know that the usual plea will be put forward, namely, paucity of funds, but money is not found wanting when Government require it for other purposes. I, however, hope that having regard to the fact that the question concerns the very existence of the people of Bengal, Government will provide additional funds for expenditure through district boards and municipalities effectively to deal with the preventible diseases. Sir, I do not wish to stand between the Hon'ble Minister and the other speakers who may follow me, but I would wind up with this request that if it be not possible at the present moment to provide any funds for the purpose, at least a survey would be made to find out the extent of such diseases in the different districts of Bengal with a view to organising a regular drive against them. With these words, I wholeheartedly support the resolution.

Babu KISHORI MOHAN CHAUDHURI: I wholeheartedly support the mover of the resolution. I think a comprehensive scheme for the whole province is an impossibility as the mover suggests. Every district has its own peculiarities and in every district the district board and the muncipal authorities and the District Magistrate in consultation and with the help of the engineering staff and the leading men of the district should, I think, prepare a comprehensive scheme for the whole district. They should then come before Government for whatever help is necessary. My district is a great sufferer in this respect. About 30 years ago when the settlement operations were over, from their report it was shown that the south-eastern portion of the district was being depopulated, and the population within 50 years was reduced by half. It was suggested that immediate steps should be taken in that area, but no steps practically speaking have been taken to fight malaria and other preventible diseases. To do this, the first thing is the supply of good drinking water and the supply of medical aid. When my friend on my left, Khan Bahadur Emaduddin Ahmed, was Chairman of the Rajshahi District Board, we consulted as to in what way this should be done. In some cases some advance was made to some of the principal men in the interior, for improving the water-supply; the amount was paid in certain areas without interest so that the district board contribution would be the interest portion only, and in that way some places were really benefited, but for want of funds of

a definite scheme, nothing further could be done. In this matter my idea is, as I have suggested, that in every district a scheme should be prepared, and the district people should consider what help they require and in what way the help can be given. All these reports should be submitted to Government, and Government will consider the matter; and if necessary, a loan should be raised. In what way that loan can be raised will be discussed on the floor of this House and action should then be taken. It is no use doing anything without any definite scheme for the purpose. That ought to be the first thing to be done; special attempt should be made, and I think without much heavy expense, the scheme can be prepared, and action can be taken upon it. Simply raising a loan or distributing the amount to some of the districts to do the needful will not do.

These are the principal points which I think ought to be taken into consideration and immediate action ought to be taken for the relief of Bengal which has suffered much on account of malaria and other preventible diseases, and every effort should be made to eradicate these diseases. With these words I support this motion.

Rai Bahadur Dr. HARIDHAN DUTT: I rise to support this resolution and, in doing so, the first remark that comes to my mind is this. It is a matter of regret that in this Council such a resolution has to be brought forward for our consideration. The Bengal of the poets, as all Bengalees know, was altogether different from the Bengal of to-day. This is particularly due to the unhealthy condition which has arisen during the last 30 or 40 years in our province. It strikes me as curious that we should be told to discuss schemes, although scheme after scheme had been prepared and shelved in the pigeonholes of the Government of Bengal. I remember in or about 1923, a very thoughtful scheme was placed before the country by the late Mr. C. R. Das. I have heard it said in this Council and elsewhere that it was one of the best schemes that have ever been placed before the country and the Government, but along with other schemes that had also been shelved. Now I see my friend Rai Munindra Deb Mahasai has come forward with this resolution, and in his enthusiasm he has gone beyond what Mr. C. R. Das and others thought out before him. The resolution is extraordinarily comprehensive, although Rai Bahadur Keshab Chandra Banerji has been heard to say that it is a very modest attempt of Rai Mahasai. I fail to understand the modest nature of it. If my friend wants to rescue our province from the scourge of malaria and all other preventible diseases, if my friend can do that, all respect, honour and glory must go to him. But how can he do that I fail to understand. So, however anxious I may be to give my support to such resolution, I must point out to the mover that it would have been much better if he had come before the Council with a smaller scheme. Malaria is foremost in our minds at the present moment. If we can

eradicate malaria even from a small portion of Bengal, we may die content. The task seems tremendous. We have heard about kala-azar for the last few years. Attempts have been made to eradicate it, but I am sorry to find that in spite of the efforts of the Government and although their attempts were successful to control kala-azar for the time being, from the last Report of Health we find that it is again increasing. If I am wrong, I hope I shall be corrected. That is a matter which ought to be looked into. I fear this battle against kala-azar and the Government's attempt to eradicate this fell disease is being done half-heartedly. So also I do not find that an earnest, enthusiastic, strong and determined effort has been made to drive out malaria from our province. I do not suggest that nothing has been done by the Government of Bengal. I admit that they have been trying to meet this trouble in their own way. But much more funds are required and what is necessary is a well-thought-out and a determinedly prepared scheme to grapple with the situation effectively. I do not know anything of East Bengal, but I do know something of West Bengal, and I find attempts are periodically and spasmodically being made to fight malaria here and there. Gallons of petrol and other oils are being poured into our tanks. For the time being, perhaps, some of the mosquitoes die, but within the next week or so they appear again and all the expenses for oiling these tanks go almost for nothing. The distribution of quinine is a part of the Government scheme in some parts of West Bengal for which thousands of rupees have been spent, but I fear the net results have been negligible. In my humble opinion, unless various steps are taken systematically in a chosen area, the result is not going to be satisfactory. My friend has just brought forward a resolution which is extraordinarily comprehensive including in its scope the whole province of Bengal. I beg to point out to this Council that it is no good having these wild-goose-chase schemes. It would be much better to confine our attention at first to a smaller locality, to a small sphere, and make a success of the experiment. (A VOICE: Only Calcutta?) Why not? Is not Calcutta and the 24-Parganas a portion of Bengal? Make your experiments wherever you like. If you prefer Dacca, do it there. But wherever you do it, do it systematically and successfully, and take one locality at a time, and when you finish with one go to another. If my friend has observed these anti-malarial measures intelligently he will agree with me that in the last 25 or 30 years lakhs and lakhs have been spent, but with what result? My friend, the oldest gentleman here, Babu Kishori Mohan Chaudhuri, has told us that in his district alone large sums have been spent in the last few years. I repeat again that if a small locality had been selected and made a success of, there would have been better results. If you go on these lines, it might not be necessary to go in for a large loan.

Government during the last 20 years have given us hope for help, co-operation and all sorts of things in the nation-building departments. Now we hear that we will get all we want from the coming Reforms. We, the present members of the existing Council, could do nothing in the way of improvement of the health and sanitation of the province. Now the dying Council talks of this comprehensive policy. I say with all the emphasis I can command that if a smaller scheme be attempted in a particular locality there would be better result possible at much less cost. You have tried to eradicate kala-azar, but you have not yet succeeded, so also with malaria. In East Bengal I understand there was no malaria. Now they are getting malaria. West Bengal has been left to its fate. Only year before last we were told that a new kind of mosquito was being imported into Calcutta. The Corporation spent a large sum of money. The Port Commissioners and other public bodies spent large sums of money. What was the tangible result? Practically nothing. Mosquitoes are breeding all the same over Calcutta. So, I ask: What is the good of pouring oil, jungle-cutting and things like that unless the result is lasting? What is really required is a well-thought-out scheme and the carrying of it out to an effective conclusion. We shall be justified m issuing a loan to raise money and spending that money over the whole province only if a really effective scheme be worked up. What is that scheme? I have not yet heard of any scheme which will materialise and which will save the province of Bengal from malaria and other preventible diseases. I want to impress upon Government the necessity of moving in the matter. If it is possible to raise a loan, do it by all means, but we should attack malaria first. I do not for a moment suggest to leave other diseases alone. But if you take malaria, tuberculosis, cholera, kala-azar, etc., all into one net, I fear the day will never come when the whole province of Bengal will be cleared of these. That struck me when I read the resolution. I press this point specially to the attention of our Hon'ble Minister who, I know, has been trying his level best, but has not yet been able to do anything tangible on account of the absence of any practical scheme and adequate funds.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I congratulate the Rai Mahasai for having drawn the attention of the House and of Government to this subject, though I need hardly say that this is a matter to which the Government are always very much alive. Government have got every sympathy with the object of this resolution, namely, the eradication of malaria and all other preventible diseases, but there are difficulties in giving effect to the proposal. Strenuous efforts, intensive campaign and expenditure of huge sums of money over a number of years would be necessary before any tangible result can be achieved in this direction. The problem is vast as several

of my hon'ble friends have admitted, and it requires a very costly and comprehensive remedy. It is naturally difficult to make much headway in a matter like this. An all-round improvement of the people will be necessary before we can make the country really healthy—all-round in the sense that we must dissipate ignorance, must improve the economic condition of the people and must improve the sanitation of the country; all this must go hand in hand. It has been said that malaria is a disease of the poor; it is born of poverty; that is exactly so. Dr. Bentley than whom Bengal had no greater friend about public health, in fact it was he who helped in rousing the sanitary consciousness of the people and what little progress this province has made during the last few years was largely due to his help and initiative, said that ignorance must be dissipated, anti-parasitic measures must be taken and the economic condition of the people must be improved. All these must be done simultaneously. So it is not one problem that we have to deal with but practically all the problems affecting the life of the people in this province. My hon'ble friend suggests in his resolution that there should be a comprehensive scheme for the eradication of malaria and eradication of all preventible diseases. It has been rightly pointed out by Maulvi Tamizuddin Khan and others that one scheme can never meet the problems in different parts of the province. The causes are quite distinct, naturally the remedies too must be different. In West Bengal probably flushing schemes might reduce the incidence of malaria, whereas in North Bengal probably flushing as well as better drainage would be necessary and in East Bengal probably the drainage is the problem. So it is futile to talk of one comprehensive scheme for the eradication of malaria for the whole of the province. There must be different schemes for different areas. This point must not be overlooked. I am grateful to the hon'ble members for the compliment they have paid to the Public Health Department for their attempt, with the limited resources at their disposal, to solve this vast and important problem. Though it is realised that we have not got the necessary resources at our disposal, it is not possible to raise one loan for the financing of one comprehensive scheme because the schemes must be different. So different loans, if loans are at all necessary, will have to be raised to finance different schemes. Government recently introduced in this House the Rural Development Bill which has since been placed on the Statute Book. The Rural Development Act contemplates both irrigation as well as sanitation measures and if schemes are available, I am sure Government will undertake those schemes under that Act. The Public Health Department propose to request the district boards to suggest small sanitation schemes affecting each district. These schemes have to be prepared on certain definite principles accepted by and in consultation with the Public Health Department. It may be quite a

long time before these schemes can be actually executed. Government have during the last few years been very much alive to this question of unhealthiness specially about malaria, and several lakhs of rupees are spent every year, directly and indirectly—directly by the Public Health Department and indirectly by grants through the district boards —on the improvement of sanitation. Our average expenditure on this head is the highest in the whole of India: our expenditure is nearly Rs. 37½ lakhs annually as against Rs. 24 lakhs in Bombay, Rs. 23½ lakhs in Madras, Rs. 19 lakhs in the United Provinces and Rs. 12½ lakhs in the Punjab. Our per capita expenditure is the highest, though our revenue is by no means the highest and our population is certainly the highest. Our per capita expenditure on Public Health is 25·82, whereas it is 4·08 in Bombay, 7·48 in Madras, 4·22 in the United Provinces and 3·52 in the Punjab. Rai Bahadur Dr. Haridhan Dutt referred to a scheme suggested by the late Mr. C. R. Das and said that like many other schemes it was shelved for ever. Nothing of the kind. I may remind my hon'ble friends that the public health units for which Government spent nearly Rs. 12 lakhs annually were the outcome of the suggestion made by the late Mr. C. R. Das. The suggestion came from him as well as from Dr. Bentley and then a scheme was evolved, and it was given effect to. The public health units are 557 in number to-day in the whole of the province; they have been working rather satisfactorily. Of course, they are quite capable of great improvement, and I hope as time goes on and we gather experience and as we get more money at our disposal, they will become more and more useful.

Reference was made by several speakers to the Burdwan experiment. The Burdwan experiment, I may inform the House, has proved a great success, but the Sanitary Board wants the experiment to be carried out for three years before it will express its opinion on it. This is the third year. If this experiment is ultimately accepted by the Sanitary Board and by other experts, I hope it will be possible for Government to introduce it in other parts of the province not as an experiment but as a definite measure against malaria.

Nawab Musharruf Hosain has said that education has nothing to do with the unhealthiness of the province. I think it has much to do. As I said before, ignorance is one of the causes and ignorance must be dissipated.

Maulvi ABUL QUASEM: Was Panama educated first?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I cannot say whether Panama was educated first or not, but that is the opinion of the very great expert to whose opinion myself and others would bow down. We must be able to instil the first principles of hygiene into the people before we can make much progress in matters of

sanitation. From their experience of the mufassal my friends must be aware how difficult it is to induce the ignorant people to give up their habits or to make them accept anything new.

Maulvi ABUL QUASEM: Can you give us any specific instance?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Yes, for instance the use of mosquito nets and the use of quinine. Mr. Quasem knows, if he has got any touch with the villagers, how difficult it is to make the villagers take quinine. As regards the use of mosquito nets, it is partly due to economic causes and partly to want of habit that they do not use it. All these are instances of ignorance. Sir, certainly it is not possible for any Government to keep tanks clean just behind a person's house. If he allows it to become a breeding-place of mosquito parasites it is no wonder that the family living in that house will suffer from malaria. Sir, the ignorant villager will not believe in the mosquito theory; so, where is the dispute that ignorance goes a long way to perpetuate this menace?

Sir, as regards the other preventible diseases, I may inform the House that the two principal preventible diseases are cholera and small-pox, and they are distinctly under control. During the last ten years there were innoculations of 1,16,39,000 people with anti-cholera vaccine, and that has brought down cholera a great deal. The number of deaths from cholera was 18,000 in the year 1925-26, but in the year 1933-34 it came down to 6,700. Similarly, in the case of small-pox there has been a very large reduction in the death rate: from 2,05,000 it has come down to 60,000. Government have spent nearly Rs. 17,00,000 during the last ten years on small-pox vaccines. So, I venture to submit that with the limited resources at the disposal of Government, they have been trying their level best to tackle the problem. A contour survey has been prepared of the area lying between the Damodar and the Hooghly in the districts of Burdwan and Hooghly, and now that the Rural Development Act has been passed, I am sure it will be possible for Government to take up schemes under that Act and, probably, loans will have to be floated for financing those schemes. They will be both irrigation as well as sanitation projects. Similarly, there are several schemes ready—or are under consideration by the Irrigation Department—for Central Bengal; and all these schemes will add greatly to the improvement of the economic and sanitary condition of the people. The idea is to flush the fields with silt-laden water to improve the sub-soil moisture of the land which will improve the yield of the fields and at the same time do away with the growth of the malaria parasite in those fields. So, Government are now very keen on taking steps against malaria, and I propose to request the district boards to prepare small sanitation schemes—

district by district—for the consideration of Government. These schemes will be prepared on certain definite accepted principles and in consultation with the Public Health Department. The schemes that will be accepted will be financed either from loan or from revenue, as the case may be. So, I hope after what I have said my hon'ble friend will kindly see his way to withdraw his resolution.

MUNINDRA DEB RAI MAHASAI: Sir, I am thankful to my colleagues in this House for the support which my resolution has received from different sections. I should, however, like to point out to my friend Maulvi Tamizuddin Khan that I am unable to agree with him when he says that free and compulsory primary education should be given preference to sanitation, and I am sorry the Hon'ble Minister himself holds the same view, too. I, of course, do not belittle the importance of education—it is indispensable to dispel the ignorance which surrounds the country. But, Sir, one must like to receive education. I must thank the Hon'ble Sir Bijoy for his sympathetic reply; but I am sorry for his attempt to cloud the real issue. I have asked for a comprehensive scheme, but he says that different schemes are necessary for different areas. I admit it, but may I ask, Sir, if such schemes have been prepared and placed before the public?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Sir, as I have explained, there cannot be any comprehensive scheme. There are certain schemes no doubt, but these schemes will have to be prepared district by district and they must be prepared by local bodies in consultation with the Public Health Department. The Rai Mahasai is wrong when he suggests one comprehensive scheme for the whole province. The resolution was put and a division was called by Mr. P. N. Guha.

(Mr. P. Banerji stood up and said that nobody had stood up and called for a division so far as he knew.)

Mr. PRESIDENT: Mr. Guha, did you not call for a division?

Mr. P. N. GUHA: Yes, Sir, I did so under a misapprehension. I am sorry, Sir, I was misled.

Mr. PRESIDENT: You must know what you are going to do.

The resolution was then put and agreed to.

Babu PREMHARI BARMA: I beg to move that this Council recommends to the Government that the circular of the 28th April, 1931, regarding the ministerial appointments of the scheduled castes in Bengal be given effect to in the districts of Dinajpur, Jalpaiguri, Rangpur and other districts and that instructions be issued to the proper authorities to strictly follow the said circular.

I will first of all read the circular, Sir, for your information. It is this:—

"The number of suitable candidates from the backward classes for ministerial appointments being at present small, Government are not prepared to prescribe percentages for all areas and districts; they desire, however, that the District Officers and all other officers who have appointments under their control should look out for and encourage candidates from backward classes especially in districts and areas where the backward classes' percentages of population is considerable or forms a large proportion of the non-Muhammadan population. Candidates from backward classes who possess qualifications required for any such appointments should not be rejected merely because other candidates have reached a higher standard. A reasonable number must be appointed under the usual conditions for probation. But the preference so given extends only to admission to probation, not to confirmation after probation. Probationers from backward classes must satisfy the same standard for confirmation as is required for all other probationers.

(*ii*) In the districts of Bakarganj and Faridpur an experiment will be made in requiring a definite proportion of the non-Muhammadan vacancies to be filled up from the backward classes and in future at least one out of every three non-Muhammadans appointed to ministerial vacancies must belong to backward classes.

(*iii*) By the 30th April each year from 1932 onwards returns should be submitted by each department to the Appointment Department showing the number of ministerial posts filled in districts and other areas during the previous financial year and how they were filled.

(*iv*) These orders will not refer to posts in the Secretariat and other offices which are filled by examinations, but the departments concerned are required to revise these examination rules so as to bring them as far as possible in conformity with the policy explained in the preceding paragraphs."

Sir, this is the circular and it had been issued with the best of intentions and best of motives for the amelioration and progress of the scheduled and backward classes of Bengal and it has been issued as far back as the 28th April, 1931. The circular I have just read contains general and special instructions. By the general instructions it advises all the District Officers and other officers who have appointments under their control to look out for and encourage candidates from backward classes, especially in districts and areas where the proportion of population of the backward classes is considerably large. The circular further requires that candidates from these classes who possess necessary qualifications for these appointments should not be rejected merely on the ground that other candidates from other communities

possess higher qualifications. The other part of the circular makes special and definite provisions to the effect that in the districts of Bakarganj and Faridpur one out of every three appointments must go to the scheduled castes.

But, Sir, though the circular is there, I regret very much to say that the Government has allowed it to remain as a dead letter in all other districts except the two fortunate districts of Bakarganj and Faridpur where it had been made compulsory that one out of every three non-Muhammadan appointments must be given to the backward class communities.

Though the circular requires that where the percentage of population of the backward classes is very large, the District Officers and other officers, who have appointments under their control, should look out for and encourage candidates from backward classes. But, Sir, I am sorry to say that far from looking out for and encouraging a candidate from the backward classes, the backward class candidates with necessary qualifications do not get any appointments. Sir, the population of the backward classes in the district of Dinajpur excluding the municipality is 5,51,395 out of the non-Muhammadan population of 8,55,199; in the district of Rangpur the number of backward classes is 5,33,003 out of the total non-Muhammadan population of 7,38,631; in the district of Jalpaiguri and the Siliguri subdivision of the Darjeeling district the number of backward classes is 5,56,075 out of the total non-Muhammadan population of 8,06,841. These figures clearly show, Sir, that the proportions of population of the backward classes in these districts is not only considerable but by far the largest. If Bakarganj with a population of the backward classes of 4,07,939 out of the total non-Muhammadan population of 7,82,914, and if Faridpur with the backward classes population of 4,86,852 out of the total non-Muhammadan population of 8,16,980 can have the special privilege of getting one non-Muhammadan appointment out of every three appointments, why not the districts of Dinajpur, Rangpur and Jalpaiguri with the figures of backward class populations just quoted should not get the same privileges of compulsorily getting one backward class appointment out of every three non-Muhammadan appointments? Government should not and ought not to adopt one policy for some districts and another policy for other districts where the conditions are exactly similar.

Government should not think that its duty is done if it only issues a circular to meet the just and legitimate claims and demands of a section of the population it governs.

Sir, the circular clearly shows that the Government is fully aware and conscious that the backward class people are really in need of encouragement and help for their progress and advancement in education and with a view to give such encouragement the Government had

been pleased to issue such a circular. But the Government should not have stopped here. It ought to have kept a vigilant eye whether the District Officers and other officers in charge of appointments are complying with instructions in the circular.

I do not think that the Government regularly receive reports from the District Officers about any appointments being given to the scheduled class people. Sir, as far as I know, not a single appointment has been given in ministerial services of the Civil Courts of Dinajpur up till now, though there has not been any dearth of candidates from the backward classes. By the untiring efforts of the late Rai Sahib Panchanan Barma only one appointment was made in the ministerial service of the Collectorate of Dinajpur and for this he had to run up to the Secretariat for an order to appoint his nominee. Sir, when the backward class candidates apply for a post, the authorities reject their applications on some pretext or other. In the case of Dinajpur, the authorities generally hold competitive examinations for selection and the backward and scheduled caste candidates who generally come with minimum qualifications necessary for the post cannot compete with the highly overqualified candidates from the advanced class communities and, consequently, the scheduled caste candidates do not get any appointments. Very often we approach the authorities and request them to select some from amongst the backward and scheduled caste candidates. In such cases the invariable reply comes from the authorities that they cannot take one with less qualifications when they are getting men of higher qualifications. In many cases such examinations are nominal examinations only. The authorities settle beforehand to whom the appointment will go.

Then, again, very often the vacancies are not advertised at all. The public cannot know that there has been any vacancy. Even if any such advertisement is made, it is made in such a way and within such a short space of time that the public cannot know about it. It becomes known only to those whose friends and relations are service-holders in any of such offices.

Sir, I am on painful necessity of bringing another matter to the notice of the Hon'ble Member and the House, and it is this: The vacancies that occur for the non-Muhammadans in Dinajpur and other districts of North Bengal are very often filled up by those whose nearest and dearest ones and friends hold some posts in the offices and who are not children of the soil, but who come from some other districts of the province. Not that the backward classes alone do not get any appointment in the ministerial services, but very often even the other class non-Muhammadan candidates of the soil with due and equal qualifications do not get any appointment.

Sir, if these and similar other tactics to shut out the backward class candidates are not stopped, it is simply impossible for the backward

classes to get any job under the Government. Sir, our Muhammadan brethren, who were somewhat in the same position before in which we are even now, had made rapid progress within two decades or so, as they got the reservation of the Government services for themselves. Sir, if the Muhammadan friends can claim and may have from the Government such reservation as a matter of right as every section of the populace under the Government has the legitimate right of having a share in the administration of the country, we can also claim to have such rights, and we appeal to the Government and the House to consider our legitimate rights and claims and to give us our due share in the administration of the country. I think the Government and the House can to a certain extent meet our legitimate claims and demands if they only be kind enough to give effect to the resolution under consideration and make it compulsory that one out of every three non-Muhammadan appointments must go to the backward and scheduled classes in the districts of Dinajpur, Rangpur, Jalpaiguri and other districts of Bengal. I sincerely hope and expect that the Hon'ble Member and the Government will kindly take into their serious consideration the helpless condition in which the scheduled and other backward classes are, and will try to take active and effective steps for the welfare and advancement of these downtrodden millions of Bengal. I commend my resolution for the acceptance of the House.

Babu NAGENDRA NARAYAN RAY: Sir, I rise to support the resolution moved by my friend Babu Premhari Barma. Sir, during the budget discussions in 1933 and also in 1934 I drew attention of the Government to the subject matter of this resolution by way of token cuts. But unfortunately the Government have not as yet found their way to extend the operation of the circular to the other districts of the province. The Appointment Department's memorandum Nos. 3540-3554A, dated Calcutta, the 28th April 1931, states, among other things, "Government desire that the district officers and all other officers who have appointments under their control should look out for and encourage candidates from backward classes especially in districts or areas where the backward classes' percentage of population is considerable or forms a large proportion of the non-Muhammadan population." Sir I understand that the term "backward classes" in this memorandum has been substituted by the term "scheduled castes" this year. Now, Sir, let us look to the scheduled castes' percentage of population in some districts. The total number of non-Muhammadan population in the Dinajpur district excluding municipal areas is 855,199 and out of this the number of the scheduled caste population is 551,395. The total number of the non-Muhammadan population in Jalpaiguri-cum-Siliguri is 806,841 out of which 556,075 persons belong to the scheduled castes and the total number of non-Muhammadan population in the Rangpur district excluding municipal areas is 738,631 and out

of this total number the scheduled caste population is 533,003. Thus, in these districts and areas the scheduled caste percentage of population greatly preponderate over the non-scheduled caste population. So, according to the said Memorandum, it is but just and proper that its operation should be extended to these districts and areas.

When the said circular was issued, Government thought that suitable candidates from the scheduled castes for ministerial appointments would not be available. But so far as these districts and areas are concerned there is no dearth of suitable candidates from the scheduled castes for ministerial appointments. In fact, many suitable candidates turn up at the time of appointment. But owing to the absence of any general circular from the Government, the cause of the scheduled caste candidates does not receive proper consideration. Under the circumstances, I request the Government to insert the names of the districts of Rangpur, Dinajpur, Jalpaiguri and the Siliguri subdivision of the Darjeeling district to paragraph (*n*) of the abovementioned memorandum and thereby to extend its operation to these districts and areas.

Babu AMULYADHAN RAY: I would not trouble the Hon'ble Member with a long recital of our complaint in respect of our representation in public services in Bengal. But I must submit that Government has practically no policy to follow in this matter. Sir, we are still a fractional part of what is generalised as a minority community and backward classes, and I submit that we should no longer be treated as a fractional part of that class. Our claims should be separately treated and recognised as in the legislature under the new Constitution by fixing a definite percentage of vacancies out of the number available to the Hindus as a whole. I hope the Hon'ble Member will bear this point in mind.

Then coming to actual working of this particular circular in question, I submit that it has not been worked out satisfactorily. If the Hon'ble Member goes over the annual returns as laid down in the circular, he will find that it has not been followed in many districts. The Hon'ble Member knows himself, at least we brought it to his notice, that in the district of Bakarganj instead of appointing scheduled caste men the District Judge appointed candidates who were not properly schedule castes as classified by the Government of Bengal. In every department we know that the authorities appointed a caste man when they ought to have appointed a scheduled caste. In one district we know they have appointed a Mahisya instead of a scheduled caste. In this way practically the whole circular is not at all followed. Therefore, my respectful submission to the Hon'ble Member would be to kindly go through the annual returns as provided in the circular and see that the said circular is made applicable to all the districts and not only to the few districts mentioned in the resolution because there is no

dearth of our candidates. With these few words I support the resolution.

The Hon'ble Mr. R. N. REID: I think the best reply I can give to the Hon'ble Member's motion is that this very point which he has raised in this resolution has been the subject of consideration by Government quite recently. The point was down for discussion during the last budget session, though I think the actual cut motion which referred to this subject was never moved and, in consequence, the Chief Secretary took up this enquiry on the lines of seeing whether it was desirable or advisable or the facts justified any review of the circular of 1931 or pointed to the necessity of extending it to a wider sphere, to a greater number of districts in the province. We consulted all the Commissioners and the general opinion was that the system which was laid down in that circular might with advantage be extended to certain districts. As Mr. Premhari Barma said, under that circular in two districts, namely, Bakarganj and Faridpur, an experiment was to be made from that date, 1931, by which at least one out of every three of the non-Muhammadan vacancies should be filled from the backward classes a list of which was attached to the circular provided suitable men were forthcoming. That proviso, as I have often said, when discussing questions of percentages of different communities, is a very important proviso and which I must say frankly is sometimes rather overlooked by our friends opposite. We must when we are appointing men to the public services have in mind very clearly the necessity of maintaining the public services at a high level, at as high a level as we can, and we must guard against the very real danger of appointing men to public services just because they belong to a particular community. I think many a District Magistrate and District Judge probably finds himself in rather a difficult position when he has a row of candidates before him and he has to decide whether so and so who belongs to a backward class should be appointed chiefly because he belongs to one of the backward classes rather than some other candidate who belongs to a different class and who has really got better qualifications. He has to say to himself that the public interest must come first and is he to appoint the very best man or is he to do something quite in accordance with the Government orders to help a particular community and would at the same time risk that the work in his office will not be carried on so efficiently and successfully as it would otherwise be.

That incidentally reminds me of the reference made by two of the speakers to the doings of a certain District Judge—one case of Bakarganj was mentioned. As regards the Civil Courts the executive have, and I am sure the House will agree that it is a very proper state of affairs, no control over the doings of the District Judge even in his administrative work and in respect of the appointment he makes for

his own office. What we do with regard to this circular is to send a copy to the High Court and bring it to the High Court's notice and trust that the High Court will agree with us, that the contents of the circular are suitable and desirable, and hope that they will order the District Judges to carry out those instructions. We do this in the hope that the Civil Courts as well as the Criminal Courts will follow out whatever policy Government have laid down in order to assist the interests of the backward communities.

One of the speakers was rather concerned about the way in which the instructions in the circular had been administered. There is no doubt that when we are required to administer a circular like this we are up against many vested interests and everyone knows those vested interests are in the hands of people who are past masters in the art of keeping appointments within the charmed circle of their relations and keeping out anyone they do not want to get in. I need hardly say that Government are very anxious that this circular should be administered properly and fairly and in such a way as to carry out the purpose for which it was issued, but Government cannot undertake to supervise its administration in every detail. We have to leave it to our officers on the spot. We do see the annual returns and we scrutinise them carefully; we call for explanations and so on whenever there appears to be anything in them which requires explanation or seems to indicate that the instructions in the circular are not properly carried out.

Perhaps, I have got a little far away from where I started when I said that Government had already as far back as April started enquiring into this matter. Though the thing has not reached the stage when Government will have made up their mind as a whole, yet the matter is ripe for decision of Government, and I hope orders will be passed very soon. What those orders precisely will be I am not in a position to say, because I am not entitled to speak on this matter until Government as a whole have made up their own minds. But I think I may say without being indiscreet that the chances are pretty good in favour of the circular being extended to those three districts to which the mover of the resolution referred. My prophecy may be wrong of course, but I give you that for what it is worth, and I would suggest that in view of what I have said the mover of the resolution will be prepared to withdraw.

Babu PREMHARI BARMA: Sir, I beg leave to withdraw my motion.

The resolution was then, by leave of the Council, withdrawn.

Mr. PRESIDENT: Order, order. The Council stands adjourned till 2 p.m. to-morrow.

Adjournment.

The Council then adjourned till 2 p.m. on Thursday, the 12th December, 1935, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Thursday, the 12th December, 1935, at 2 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHOWDHURY, of Santosh) in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers and 88 nominated and elected members.

Oath or affirmation of allegiance.

Rai Bahadur Gris Chandra Sen made an affirmation of allegiance to the Crown

STARRED QUESTIONS

(to which oral answers were given)

Prisoners' dining shed in Tippera Jail.

*21. **Maulvi SYED OSMAN HAIDER CHAUDHURI:** (*a*) Is the Hon'ble Member in charge of the Political (Jails) Department aware—

(*i*) that there is no shed in the Tippera Jail for the ordinary prisoners to have their meals in during the rainy and the hot weather;

(*ii*) that the Board of Visitors recommended the construction of such a shed for this purpose in September last; and

(*iii*) that the scheme has been approved and an estimate has been sanctioned by the Inspector-General of Prisons?

(*b*) If the answer to (*a*) (*iii*) is in the affirmative, are the Government considering the desirability of taking steps in the matter?

MEMBER in charge of POLITICAL (JAILS) DEPARTMENT (the Hon'ble Mr. R. N. Reid): (*a*) (*i*), (*ii*) and (*iii*) Yes.

(*b*) The only obstacle that stands in the way of the completion of the work is the difficulty of finding funds in view of the numerous demands upon the minor works grant.

Maulvi TAMIZUDDIN KHAN: Will the Hon'ble Member be pleased to state whether there is any likelihood of the difficulty being removed in the course of the current financial year?

The Hon'ble Mr. R. N. REID: I should rather be surprised if it was, Sir.

Allowances to suspected terrorists.

*22. **Mr. P. BANERJI:** (*a*) Will the Hon'ble Member in charge of the Political Department be pleased to state—

(*i*) whether it is a fact that a confined terrorist when interned or externed gets personal and family allowance under the Bengal Criminal Law Amendment Act; and

(*ii*) whether it is also a fact that a suspected terrorist when interned or externed under the Bengal Suppression of Terrorist Outrages Act does not get any kind of allowance?

(*b*) If the answer to (*a*) is in the affirmative, what are the reasons for the differential treatment?

The Hon'ble Mr. R. N. REID: (*a*) (*i*) and (*ii*) and (*b*) Under section 2 (*1*) of the Bengal Criminal Law Amendment Act, Government may detain a person anywhere in the province or at Deoli, or restrict his movements, or extern him from the province, and the law provides that Government shall grant an adequate allowance to such a person and may also make an allowance to his dependants. Under the rules made under the Bengal Suppression of Terrorist Outrages Act the District Magistrate has power, in certain circumstances, to direct a person to remain in a certain area within the district or to extern him from the district. The law makes no specific provision for an allowance in such a case, but Government are prepared to consider hard cases in which, owing to the form of restraint imposed and the pecuniary condition of the person concerned, an allowance may be held to be necessary.

Mr. P. BANERJI: Is the Hon'ble Member aware that many of their applications do not reach the hands of Government, simply because they are not forwarded?

The Hon'ble Mr. R. N. REID: I am not aware of any such cases, Sir.

Mr. P. BANERJI: Is the Hon'ble Member prepared to make an enquiry into the matter, and to remove the anomalies that exist by changing the rules as he thinks fit?

The Hon'ble Mr. R. N. REID: There are two specific points in this supplementary question. The first point is whether I should be prepared to make enquiries. Well, if the hon'ble member can bring specific instances to my notice, I am quite prepared to enquire into them. As regards his second point, I think I am not competent to remove the anomalies that exist in the law.

Mr. P. BANERJI: In order to remove the anomalies, is the Hon'ble Member prepared to bring in an amending Bill in the near future?

The Hon'ble Mr. R. N. REID: Not at present, Sir.

Mr. SHANTI SHEKHARESWAR RAY: With reference to the latter part of the answer, will the Hon'ble Member be pleased to state whether Government have received any applications for allowance from such detenus?

The Hon'ble Mr. R. N. REID: Yes.

Mr. SHANTI SHEKHARESWAR RAY: Will the Hon'ble Member be pleased to state if Government have granted any allowance to such detenus?

The Hon'ble Mr. R. N. REID: Not so far, Sir.

Old Benares Road, Chanditala-Champadanga section.

***23. Babu JITENDRALAL BANNERJEE:** (*a*) Is the Hon'ble Minister in charge of the Local Self-Government Department aware—

(*i*) that the Old Benares Road, part of which passes through the districts of Howrah and Hooghly, is an important highway of communication both as an inter-district and inter-provincial road;

(*ii*) that there is a heavy traffic in country produce over that part of the road which runs from Salkia to Chanditala and then from Chanditala to Champadanga;

(*iii*) that the Chanditala-Champadanga section of this portion is still unmetalled and becomes almost impassable for carts as well as passengers, during and immediately after the rains; and

(*iv*) that the metalling and improvement of this section, viz., the Chanditala-Champadanga section of the road has been repeatedly recommended by the Bengal Chamber of Commerce, the Bengal National Chamber of Commerce, the Automobile Association of Bengal, the District Board of Hooghly, and by successive Commissioners of the Burdwan Division?

(*b*) Will the Hon'ble Minister be pleased to state whether the improvement of this road is proposed to be taken up on the recommendation of the Road Board in the immediate future?

MINISTER in charge of LOCAL SELF-GOVERNMENT DEPARTMENT (the Hon'ble Sir Bijoy Prasad Singh Roy): (*a*) (*i*), (*ii*) and (*iii*) Yes.

(*iv*) Representations were received from the Bengal Chamber of Commerce, the Bengal National Chamber of Commerce and the Automobile Association of Bengal for the improvement of the portion of the road lying between Chanditala and Seakhala, but no communication in this matter has been received from the Hooghly District Board and the Divisional Commissioner.

(*b*) The matter was considered by the Provincial Board of Communications and it was decided to refer the proposal to the Special Officer, Road Development Projects, the District Boards of Hooghly and Howrah and the Commissioner of the Division for their views.

UNSTARRED QUESTIONS

(answers to which were laid on the table)

Prisoner Abdul Halim in Alipore Central Jail.

9. Maulvi MUHAMMAD FAZLULLAH: (*a*) Will the Hon'ble Member in charge of the Political (Jails) Department be pleased to state whether it is a fact that Abdul Halim, convicted of sedition in connection with the labour movement and now lodged in the Alipore Central Jail, has been segregated inside an iron cage and refused all facilities for writing?

(*b*) If the answer to (*a*) is in the affirmative, what are the reasons for this treatment?

The Hon'ble Mr. R. N. REID: (*a*) No.

(*b*) Does not arise.

LEGISLATIVE BUSINESS

NON-OFFICIAL BILLS.

The Calcutta Municipal (Amendment) Bill, 1935.

MUNINDRA DEB RAI MAHASAI: Sir, I beg to move that the Calcutta Municipal (Amendment) Bill, 1935, be referred to a Select Committee consisting of—

(1) The Hon'ble Minister in charge of the Local Self-Government Department,

(2) Mr. S. K. Haldar,

(3) Mr. S. M. Bose,

(4) Rai Bahadur Jogesh Chandra Sen,

(5) Babu Jitendralal Bannerjee,

(6) Mr. R. Maiti,

(7) Mr. P. Banerji,

(8) Mr. Narendra Kumar Basu,

(9) Dr. Naresh Chandra Sen Gupta,

(10) Mr. Shanti Shekhareswar Ray,

(11) Maulvi Abul Quasem,

(12) Khan Bahadur Muhammad Abdul Momin, and

(13) the mover,

with instruction to submit their report as soon as possible and that the number of members whose presence shall be necessary to constitute a quorum shall be five.

Rai Bahadur Dr. HARIDHAN DUTT: Sir, I rise to oppose this motion for reference to Select Committee, and I am glad to find that the opinions obtained by circulation is in favour of the opinion I hold personally. On a reference to the printed opinions received on this Bill, I am glad to find that the British Indian Association has clearly stated what is actually felt in the matter in this city. Before going into it, I should like to inform the House that when the Municipal Act of 1923 was enacted by the late Sir Surendra Nath Banerjea, this question of giving enfranchisement to the students of Calcutta was carefully considered. Along with that, the question arose as to whether the Calcutta University should be allowed to have a seat in the

local Corporation. After a lot of discussion, however, these proposals were rejected, and the principle accepted then was that of "he who pays the piper, has the right to call for the tune." Before 1923, there was a system of plural votes which was enjoyed by Calcutta, but that was done away with by one stroke of the pen, and all citizens of Calcutta have been reduced to the level of "one man, one vote." The rich could have raised a lot of objections, but they did not. On the contrary, they have accepted the principle then laid down, and that principle was being followed for the last twelve years. Now my friend wants to introduce such changes as would materially alter the method of franchise in vogue in Calcutta. To that, I am glad to find, the British Indian Association has given a suitable reply. They say:—

"The Calcutta municipal area consists of 20,101 acres and the number of occupied houses, as reported in the census of 1931, is 203,231. The average number of persons per house in the city is taken to be six; there is thus more than one person per house who is literate in English."

Now, Sir, one member, however rich he may be, has only one vote, and if in addition the principle of literacy is recognised, people who have a real stake in the city will have a very feeble voice in the governance of the Corporation in comparison with persons who have no such stake. This would mean giving the franchise to some irresponsible citizens whose interest has not taken any root in the city. Sir, on the analogy of "no taxation, no representation," the question of franchise cannot arise at all in respect of those who are not called upon to make any contribution, and the opinion of the British Indian Association in this respect cannot, I think, be ignored. Then, Sir, as regards the other opinions received, I find there is no special support given to the Bill. I think that my friend has given too much importance to what is going on in connection with the franchise of the Bengal Legislative Assembly and other Councils by bringing this amending Bill. Sir, the British Indian Association has aptly pointed out that the conditions prevailing in Calcutta is different from those prevailing in the mufassal areas in Bengal, and that, therefore, the analogy of the Bengal Municipal Act recognising educational qualifications in the matter of election does not at all hold good. Literary qualifications have been recognised in respect of provincial Legislative Assemblies in the Government of India Act of 1935, but that is also a different issue altogether. That has been done on political grounds which lose much of their force in the matter of election to the Corporation. The Corporation is a local body, and it has to look after the wants and requirements of the people of the city. What has that got to do with students coming here for study for, say, two or three years? Those who pay taxes in connection with the residences they occupy obtain their votes as occupiers under the present Act, and they can have no grievance. But why should we be

anxious to enfranchise the whole of this class of people when we know full well that they have no permanent and abiding interests in the city of Calcutta and pay no taxes. These are the reasons, Sir, which have led me to oppose the reference of the Bill to Select Committee.

Mr. P. BANERJI: Sir, I rise to support this motion. The argument that has been put forward by Rai Bahadur Dr. Haridhan Dutt cannot stand a minute's scrutiny. He is thinking in the same way as people did long long ago, but it is certainly in the fitness of things in these days of advancement that the franchise must be enlarged. It has been enlarged in the case of this Council, it has been enlarged in the case of mufassal bodies, and it, therefore, stands to reason that people who might not be rich but who are educated enough to intelligently use their franchise, must be enfranchised. Then, Sir, I should ask Dr. Dutt to remember what would have been the position of Calcutta but for the students and other people coming from different parts of Bengal to enrich her? It must be remembered that Calcutta was only inhabited by a few fishermen, and that it has become the second city of the Empire only because outsiders have come here. Now, it does not lie in the mouth of Dr. Dutt to say that these outsiders should not be enfranchised. Dr. Dutt says that political considerations must not be allowed to enter into this question because the Corporation is after all a local body whose primary functions are to look after the health and comforts of her people. He is afraid of the politically-minded people coming and sweeping the polls. But he must remember that when these politically-minded people came and seized the Corporation, what a change they have effected there. It is well known, Sir, that in the past *bustees* were always neglected, but there in the *bustees* milk is now regularly supplied by the Corporation. Besides, the condition of the *bustees* has been improved a lot. Then there has been considerable improvement in the sanitary condition of the city. The real motive behind, therefore, is that if these politically-minded men are allowed to sweep the polls, there would not be the least chance for men like Dr. Dutt to enter the Corporation. With these words, Sir, I support the motion for reference to Select Committee.

The Calcutta Municipal (Amendment) Bill, 1935 (by Dr. Naresh Chandra Sen Gupta).

Dr. NARESH CHANDRA SEN GUPTA: May I, Sir, with your permission, move the next motion which stands in my name?

Mr. PRESIDENT: For some urgent and unavoidable reasons Dr. Sen Gupta asked my permission to leave the Chamber immediately after formally moving the next motion at this stage. The question is whether compliance may be granted to his request. The argument that can be advanced in his favour is that he intends to move his motion

formally and is not asking the House to actually deal with it until all the items of the other Bills now before the House are disposed of. I would not like to take the whole responsibility upon myself in this matter, nor would I like to create a precedent, but if the Hon'ble Minister particularly and the House generally have no objection, I am prepared to accommodate Dr. Sen Gupta.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I have no objection, Sir, to Dr. Sen Gupta moving his motion now.

Mr. SHANTI SHEKHARESWAR RAY: I respectfully beg to submit that it is neither a matter that is for the convenience of any individual member, nor one at the discretion of the President, nor one which depends on the consent of the House as a whole. Sir, the rules provide that the arrangement arrived at by a ballot is final.

Mr. PRESIDENT: The order of priority as settled by the ballot is no doubt final, but you must not forget that we are not going to deal with Dr. Sen Gupta's Bill until we have finished with the other Bill. We are simply accommodating him by allowing him formally to move his motion now, as he is compelled to leave the Chamber. Rai Mahasai's Bill which has been moved has already taken its precedence over the Doctor's Bill, and the Mahasai will not be prejudiced in any way. (SEVERAL VOICES: No objection.) The House seems to agree with me. Having regard to the provisions of section 52A, as the Doctor is compelled to be away, I allow him formally to move his motion in respect of his Bill which is the next item of business on the order paper in order of priority.

Mr. SHANTI SHEKHARESWAR RAY: What will be the position if the business in hand is not disposed of in this session?

Mr. PRESIDENT: In that case, the Bill will be carried over to the next session.

Dr. NARESH CHANDRA SEN GUPTA: I beg to move that the Calcutta Municipal (Amendment) Bill, 1935, be referred to a Select Committee consisting of—

(1) The Hon'ble Minister in charge of the Local Self-Government Department,
(2) Mr. Narendra Kumar Basu,
(3) Khan Bahadur Muhammad Abdul Momin,
(4) Mr. W. H. Thompson, and
(5) the mover,

with instruction to submit their report within a week from the date on which the motion is carried in Council and that the number of members whose presence shall be necessary to constitute a quorum shall be three

The Calcutta Municipal (Amendment) Bill (by Munindra Deb Rai Mahasai).

The Hon'ble Sir BIJOY PRASAD SINGH ROY: May I, at this stage, move an amendment, with your permission, to the motion of Dr. Sen Gupta for the inclusion of the name of Mr. S. K. Haldar——

Mr. PRESIDENT: We will take that up later on. Dr. Sen Gupta has formally moved his motion and the matter must rest there until the Rai Mahasai's Bill is disposed of. We will now resume the discussion on that Bill.

Maulvi ABUL QUASEM: Sir, I rise to give my support to the motion moved by Munindra Deb Rai Mahasai. It has already been recognised by this House in connection with the passage of the Bengal Village Self-Government Act that education should be an independent qualification for a voter in addition to other qualifications. That principle has also been accepted in the case of the Bengal Municipal Act, and I cannot see any reason why the same principle should not be accepted in the case of the Calcutta Corporation. Dr. Dutt seems to suggest that the Rai Mahasai wants to enfranchise students who live temporarily for two or three years in messes or hostels in Calcutta and then return to their village homes. But that is not the fact, Sir. What about the students and other educated men who are permanently settled in Calcutta?

Rai Bahadur Dr. HARIDHAN DUTT: But they are already voters.

Maulvi ABUL QUASEM: No, Sir. What I want is that such men on account of their educational qualifications should be allowed to exercise their votes in the same manner in which they have been allowed to do in the case of village local bodies. The trend of the times is that education should be encouraged and that it should be an independent qualification for a person to exercise a vote. Education enables a man to exercise his vote intelligently. In a big city like Calcutta, there are direct tax-payers as well as indirect tax-payers—men who come from the mufassal and enrich the funds of the Corporation by paying taxes indirectly. Why should they not be enfranchised? The whole intellectual life of Bengal is focussed in Calcutta. Calcutta is the home of the intelligentsia of Bengal, and the intelligentsia form a very important factor of Calcutta's population. They contribute to the growth of the city of Calcutta, to its dignity, and to its importance in the body politic of the country. If you give the franchise to the educated people who have permanently settled in Calcutta, you will be making such addition to Calcutta's voters' list as will bring credit to the governance and administration of the city. Sir, I do strongly support the motion of the Rai Mahasai.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Sir, Government are prepared to agree to the motion to refer the Bill to a Select Committee on the distinct understanding that they do not commit themselves to the principles of the Bill. Government are expecting to have the opinion of the Calcutta Corporation on this Bill, and they do not propose to decide their line of action until they receive the opinion of the Calcutta Corporation.

Mr. PRESIDENT: If you do not oppose the motion and the Bill is referred to a Select Committee of the House, will you not be committing yourself to the principles of the Bill?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: But, Sir, Government have not yet been able to decide what attitude they should adopt.

Mr. PRESIDENT: Even in that case, you stand committed to the principles of the Bill by not opposing this motion.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: My point is that Government will be free to decide their attitude later on with respect to this Bill. We may either support or oppose it.

Mr. PRESIDENT: The Second Reading of a Bill, corresponding to the Select Committee stage, is the most important stage of a Bill, for there the principles are either affirmed or rejected.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: But does it mean, Sir, that Government must support the Bill?

Mr. PRESIDENT: No, only that if you do not oppose the Bill at this stage, you are in a manner committing Government to the principles of the Bill as a whole.

Maulvi TAMIZUDDIN KHAN: When a Bill is referred to a Select Committee, no doubt, the House accepts the principles of the Bill, but individual members are at liberty either to support or oppose the Bill. I think the Hon'ble Minister can adopt the same attitude towards the Bill.

Mr. PRESIDENT: Yes, that is perfectly true, but I understood the Hon'ble Minister not to speak on his own behalf but on behalf of Government, and he said that Government are prepared to agree to the motion to refer the Bill to a Select Committee.

Rai Bahadur Dr. HARIDHAN DUTT: Sir, on a point of information. May I enquire whether Government accept the principles of the Bill.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I think, Sir, I made myself clear that Government agree to the reference of this Bill to Select Committee without committing themselves as regards their future attitude towards it.

Rai Bahadur Dr. HARIDHAN DUTT: Does that mean that Government accept the principles underlying the Bill?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I have said all that I can say at the present stage. Even if the House accepts the principles of the Bill, it does not mean that Government accept it.

Mr. PRESIDENT: If you wish to have my direction, I would suggest that in that case Government members would do well to abstain from voting.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: All right, Sir.

The following motion was then put and agreed to:—

"That the Calcutta Municipal (Amendment) Bill, 1935, be referred to a Select Committee consisting of—

(1) The Hon'ble Minister in charge of the Local Self-Government Department,

(2) Mr. S. K. Haldar,

(3) Mr. S. M. Bose,

(4) Rai Bahadur Jogesh Chandra Sen,

(5) Babu Jitendralal Bannerjee,

(6) Mr R. Maiti,

(7) Mr. P. Banerji,

(8) Mr. Narendra Kumar Basu,

(9) Dr. Naresh Chandra Sen Gupta,

(10) Mr. Shanti Shekhareswar Ray,

(11) Maulvi Abul Quasem,

(12) Khan Bahadur Muhammad Abdul Momin, and

(13) the mover,

with instruction to submit their report as soon as possible, and that the number of members whose presence shall be necessary to constitute a quorum shall be five."

The Calcutta Municipal (Amendment) Bill, 1935 (by Dr. Naresh Chandra Sen Gupta.)

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Sir, I beg to move that the name of Mr. S. K. Haldar be inserted after No. (4).

The motion that the name of Mr. S. K. Haldar be inserted after the name of Mr. W. H. Thompson was put and agreed to.

The following motion was then put and agreed to:—

"That the Calcutta Municipal (Amendment) Bill, 1935, be referred to a Select Committee consisting of—

(1) The Hon'ble Minister in charge of the Local Self-Government Department,
(2) Mr Narendra Kumar Basu,
(3) Khan Bahadur Muhammad Abdul Momin,
(4) Mr. W. H. Thompson,
(5) Mr. S. K. Haldar, and
(6) the mover,

with instruction to submit their report within a week from the date on which the motion is carried in Council and that the number of members whose presence shall be necessary to constitute a quorum shall be three."

The Bengal Municipal (Amendment) Bill, 1935.

Mr. P. BANERJI: Sir, I beg to move that the Bengal Municipal (Amendment) Bill, 1935, be referred to a Select Committee consisting of—

(1) The Hon'ble Minister in charge of the Local Self-Government Department,
(2) Mr. Shanti Shekhareswar Ray,
(3) Kazi Emdadul Hoque,
(4) Babu Hem Chandra Roy Choudhuri,
(5) Maulvi Tamizuddin Khan,
(6) Babu Nagendra Narayan Ray,
(7) Maulvi Abdus Samad,
(8) Maulvi Abdul Ghani Chowdhury,
(9) Mr. R. Maiti,
(10) Babu Sarat Chandra Mittra,
(11) Maulvi Abul Quasem,
(12) Khan Bahadur Muhammad Abdul Momin,
(13) Raja Bahadur Bhupendra Narayan Sinha, of Nashipur,
(14) Maulvi Nur Rahman Khan Eusufji,
(15) Khan Bahadur Maulvi Muazzam Ali Khan,

(16) Maulvi Abdul Hamid Shah,

(17) Maulvi Abdul Hakim,

(18) Khan Bahadur A. F. M. Abdur-Rahman,

(19) Dr. Amulya Ratan Ghose,

(20) Babu Amulyadhan Ray,

(21) Babu Premhari Barma,

(22) Srijut Taj Bahadur Singh,

(23) Maulvi Rajib Uddin Tarafder,

(24) Maulvi Muhammad Fazlullah,

(25) Babu Khetter Mohan Ray, and

(26) the mover,

with instruction to submit their report as soon as possible, and that the number of members whose presence shall be necessary to constitute a quorum shall be seven.

Sir, in placing this motion before the House, I may say that at the last session of Council this Bill was circulated for public opinion and so far about 60 opinions have been received and almost all of them are in favour of the provisions of the Bill, excepting the Bengal Chamber of Commerce and another association which think that there is no necessity for a piecemeal legislation like this; and so these bodies refrain from commenting on the amendments proposed in my Bill. There are only three matters which I want to be done by this Bill. One of these is that the rates should be paid by the owners and occupiers as well. Now, the rates are to be paid by the owners only, and objection has been taken by some of the municipalities, but I think they have done so owing to a misconception. I may point out that if in the Calcutta Corporation half the rates have to be paid by the occupiers, I see no reason why this cannot be done in the mufassal municipalities. The Chairmen and Commissioners of several municipalities have experienced this difficulty and in many mufassal towns there are many holdings in which houses have been built by people who are not residents of these places. These non-resident proprietors realise the rents from their tenants, but do not pay the rates to the municipalities. The municipalities cannot realise the rates from the occupiers as the law does not empower them to do so. Therefore, my amending Bill wants to give relief to the mufassal municipalities of Bengal. It may be contended that there is a provision by which the rates can be realised by proceeding against the holdings, but in the majority of cases where the owners are absentee landlords they realise the rents, but do not pay the rates. The municipalities in such cases cannot realise their dues without great difficulty and thus owing to paucity of funds, it is difficult for them to run their administration.

Sir, I have proposed another amendment which will enable documents executed by the Chairman or a member of a municipality to be registered without requiring the presence of the Chairman or member. Such an amendment has already been made in the case of Chairmen of district boards. As the Chairmen of municipalities are also busy men, it seems quite in the fitness of things that the same concession should be extended to municipalities.

The last amendment relates to the hearing of appeals. The existing provision is that the Chairman and two Commissioners should hear appeals. It may happen on many occasions that for some reason or other a Commissioner cannot attend and, consequently, the appeals are not heard and the parties have to go away frustrated. I have suggested that instead of two Commissioners there should be at least four, so the Committee will consist of the Chairman and four Commissioners, that is, five in all.

These, Sir, are the objects of my amending Bill and as public opinion is in favour of its provisions, I hope the Hon'ble Minister will see his way to accept my motion.

Rai Bahadur SATYENDRA KUMAR DAS: Sir, the mover of this Bill wants the occupier of a holding to be liable for the rates to the extent of 50 per cent. I have got some experience of mufassal municipalities, and I think it will create difficulty in the administration of municipalities. There is also the fact that under the present law the holding is liable for the rates, no matter whether the owner is living in Delhi or Simla. For these reasons I cannot but oppose the motion.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I beg to move that for the personnel proposed by the mover the following names be substituted:—

(1) Rai Bahadur Satyendra Kumar Das,
(2) Rai Bahadur Gris Chandra Sen,
(3) Khan Bahadur Muhammad Abdul Momin,
(4) Maulvi Tamizuddin Khan,
(5) Babu Khetter Mohan Ray,
(6) Mr. S. M. Bose,
(7) Mr. P. Banerji,
(8) Maulvi Abul Kasem,
(9) Mr. Narendra Kumar Basu,
(10) Mr. C. G. Cooper,
(11) Khan Bahadur Maulvi Emaduddin Ahmed,
(12) Babu Profulla Kumar Guha,
(13) Rai Bahadur Sarat Chandra Bal, and
(14) myself.

I would like, with your permission, Sir, to add the name of Mr. S. K. Haldar. It is merely an omission through oversight. In the instructions for the word "seven," I propose that the word "five" be substituted. My object is that Government propose to introduce a Bill to amend the Bengal Municipal Act in this session of the Council and to move for referring it to a Select Committee. I have already given notice of this and if this Bill be referred to an identical Select Committee it will facilitate their consideration. It is not necessary to have a separate Select Committee.

Mr. P. BANERJI: I accept that.

Mr. PRESIDENT: I take it that you are withdrawing the second portion of your amendment.

The second portion of the motion was, by leave of the House, withdrawn.

The amendment of the Hon'ble Minister was put and agreed to with the addition, "with instruction to submit their report as soon as possible and that the number of members whose presence shall be necessary to constitute a quorum shall be five."

The Bengal Municipal (Amendment) Bill, 1934.

Rai Bahadur SATYENDRA KUMAR DAS: I beg to move that the Bengal Municipal (Amendment) Bill, 1934, be referred to a Select Committee consisting of—

(1) The Hon'ble Minister in charge of the Local Self-Government Department,

(2) Mr. S. K. Haldar,

(3) Rai Bahadur Gris Chandra Sen,

(4) Maulvi Tamizuddin Khan,

(5) Khan Bahadur Nawabzada Khwaja Muhammad Afzal,

(6) Maulvi Abdul Ghani Chowdhury,

(7) Rai Bahadur Keshab Chandra Banerji,

(8) Mr. Ananda Mohan Poddar,

(9) Babu Khetter Mohan Ray,

(10) Babu Hem Chandra Roy Choudhuri,

(11) Mr. S. M. Bose,

(12) Mr. P. Banerji,

(13) Babu Jatindra Nath Basu,

(14) Mr. Sarat Kumar Roy, and

(15) the mover,

with instruction to submit their report by the 21st December, 1935, and that the number of members whose presence shall be necessary to constitute a quorum shall be five.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I beg to move that for the personnel proposed by the mover the following names be substituted:—

(1) Rai Bahadur Satyendra Kumar Das,
(2) Rai Bahadur Gris Chandra Sen,
(3) Khan Bahadur Muhammad Abdul Momin,
(4) Maulvi Tamizuddin Khan,
(5) Babu Khetter Mohan Ray,
(6) Mr. S. M. Bose,
(7) Mr. P. Banerji,
(8) Maulvi Abul Kasem,
(9) Mr. Narendra Kumar Basu,
(10) Mr. C. G. Cooper,
(11) Khan Bahadur Maulvi Emaduddin Ahmed,
(12) Babu Profulla Kumar Guha,
(13) Rai Bahadur Sarat Chandra Bal,
(14) Mr. S. K. Haldar, and
(15) myself.

Rai Bahadur SATYENDRA KUMAR DAS: I accept that.

The second portion of the amendment was, by leave of the Council, withdrawn.

The amendment of the Hon'ble Minister was put and agreed to with the addition, "with instruction to submit their report as soon as possible and that the number of members whose presence shall be necessary to constitute a quorum shall be five."

The Bengal Municipal (Amendment) Bill, 1935.

Rai Bahadur SATYENDRA KUMAR DAS: I beg to move that the Bengal Municipal (Amendment) Bill, 1935, be referred to a Select Committee consisting of—

(1) The Hon'ble Minister in charge of the Local Self-Government Department,
(2) Mr. S. K. Haldar,

(3) Rai Bahadur Gris Chandra Sen,
(4) Maulvi Tamizuddin Khan,
(5) Khan Bahadur Nawabzada Khwaja Muhammad Afzal,
(6) Maulvi Abdul Ghani Chowdhury,
(7) Rai Bahadur Keshab Chandra Banerji,
(8) Mr. Ananda Mohan Poddar,
(9) Babu Khetter Mohan Ray,
(10) Babu Hem Chandra Roy Choudhuri,
(11) Mr. S. M. Bose,
(12) Mr. P. Banerji,
(13) Babu Jatindra Nath Basu,
(14) Mr. Sarat Kumar Roy, and
(15) the mover,

with instruction to submit their report by the 21st December, 1935, and that the number of members whose presence shall be necessary to constitute a quorum shall be five.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I beg to move that for the personnel proposed by the mover the following names be substituted:—

(1) Rai Bahadur Satyendra Kumar Das,
(2) Rai Bahadur Gris Chandra Sen,
(3) Khan Bahadur Muhammad Abdul Momin,
(4) Maulvi Tamizuddin Khan,
(5) Babu Khetter Mohan Ray,
(6) Mr. S. M. Bose,
(7) Mr. P. Banerji,
(8) Maulvi Abul Kasem,
(9) Mr. Narendra Kumar Basu,
(10) Mr. C. G Cooper,
(11) Khan Bahadur Maulvi Emaduddin Ahmed,
(12) Babu Profulla Kumar Guha,
(13) Rai Bahadur Sarat Chandra Bal,
(14) Mr. S. K. Haldar, and
(15) myself.

Rai Bahadur SATYENDRA KUMAR DAS: I accept that.

The second portion of the amendment was, by leave of the Council, withdrawn.

The amendment of the Hon'ble Minister was put and agreed to, with the addition, "with instruction to submit their report as early as possible and that the number of members whose presence shall be necessary to constitute a quorum shall be five."

The Bengal Tenancy (Amendment) Bill, 1935.

Rai Bahadur SATISH CHANDRA MUKHERJI: I beg to move for leave to introduce a Bill further to amend the Bengal Tenancy Act, 1885.

The motion was put and agreed to.

The Secretary then read the short title of the Bill.

The Bengal Local Self-Government (Amendment) Bill, 1935.

Rai Bahadur JOGESH CHANDRA SEN: I beg to move for leave to introduce a Bill to amend the Bengal Local Self-Government Act of 1885.

The motion was put and agreed to.

The Secretary then read the short title of the Bill.

Rai Bahadur JOGESH CHANDRA SEN: I beg to move that the Bengal Local Self-Government (Amendment) Bill, 1935, be taken into consideration. In requesting the House to take the Bill into consideration it is necessary for me to explain the section which I want to amend. Before 1932 the term of the district and local boards was for 3 years. The Bengal Local Self-Government Act is as old as 50 years. It was done in 1885 and it is now 1935, so it is 50 years old, and only some additions and alterations were made in 1932 and for that we thank Sir Bijoy Prasad, our present Minister. It was at that time that the term was extended from 3 to 4 years, but it was suggested then that it should be for 5 years. But, Sir, at that time the term of the Council and Assembly was only for 3 years and naturally the members could not think of further extension though they wanted it. Now, Sir, the Government of India Act has recognised this and extended the term of the Council and Assembly from 3 to 5 years and this for very good reasons. By this the legislature will be able to watch the progress of the province and Ministers will get time to frame different schemes and work them out under their guidance. All these apply equally in the case of district boards. They are also to run a miniature form of Government, and here the Government of Bengal spend about 10 crores of rupees while the district boards spend possibly 10 lakhs of rupees. The district boards are in charge of primary education; medical and sanitation, public works and ferries and last, though not least union boards, excepting police. They are in charge of other institutions. They also have to frame rules and regulations. They have to prepare bi-annual, tri-annual and quinquennial programmes of work. The Chairman of a board is to acquire intimate knowledge of his district and watch the effect of steps taken by him for the improvement of the district. These things can never be

possible if the term be so short, as you know very well the saying "a rolling stone gathers no moss." Before I proceed further, I should place some facts regarding the working of the district board. Let us take that the term is for 4 years—first year a new board comes in with a number of fresh recruits—their chief aim is to shelve the old projects as far as possible and to start new ones, so that they might justify their position, and there is always some misgiving between one part of the house and the newly elected executive of the board. Members are busy in gathering information, but no work is done. Now we come to the second and third years—some good works are sought to be done and new ideas are initiated.

Then we come to the 4th year; for the new election they try to consolidate their position in the next board and we find that some motions of doubtful utility coming before the board for decision. This is the picture before you. There are 26 district boards in this province and, in order to make them really useful, you should give them all facilities and strengthen their hands and extension of the term of the board is the first step in order to help them specially when the new Reforms are coming. It is through these district boards that all improvements are to be introduced and, therefore, it is but natural and reasonable to request Government to accept this amendment. The Government of Bihar and Orissa in their wisdom—I beg to inform this House—only in March last has extended the term of the district and local boards from 3 years to 5 years after mature deliberation. Previous to this Bihar and Bengal used to be guided by the Bengal Local Self-Government Act. Now Bihar has gone ahead, and it is now the turn of the Bengal Government to revise its own Act. My Bill is based entirely on that line. I have consulted some district boards and they entirely agree with me in this matter; of course, I could not consult all. Most of my mufassal colleagues who are here have some knowledge about the affairs of the district boards and they will well realise the importance of this amendment. I hope, therefore, that the House will be pleased to accept my amendment and thereby give working facilities to the district and local boards. I hope Government will shake off its conservatism and go ahead and must not say: "Oh, we had some amendments only 3 years back, so wait and watch." The question is so simple and the proposition is so very modest that it should never be objected to. For facility of work I say again the term need be extended. All A class appointments under Government are for 5 years. Life of the Council and Assembly would be for 5 years. Members of the present Executive Council hold office for 5 years and surely there is a good reason behind this. It gives working facility. No edifice can be built up in the twinkling of an eye. Time is the main factor, and we should give them chance to acquire experience and knowledge which, in fact, are the keystones of success, and I appeal to you all to help these institutions in all possible

ys and as an earnest of that I request you to accept this amendment day. I do not appeal to your sentiment but to your business instinct, your experience as legislator to give this small facility to these ponsible district boards.

Before I resume my seat, I would once more appeal to the Hon'ble nister to give sympathetic consideration to this proposal.

Rai Bahadur SATYA KINKAR SAHANA: I seek your kind per-sion to move a short-notice amendment. The Bill which has been oduced by Rai Bahadur Jogesh Chandra Sen, namely, the Bengal al Self-Government (Amendment) Bill, 1935, is of immense ortance——

Mr. PRESIDENT: What is your amendment?

Rai Bahadur SATYA KINKAR SAHANA: I beg to move that the gal Local Self-Government (Amendment) Bill, 1935, be circulated eliciting public opinion thereon by the 31st January, 1936.

Mr. PRESIDENT: I admit it and hold that you have duly moved

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Sir, I am afraid I e got to oppose this amendment as well as the original motion. As hon'ble mover has himself explained, only 3 years ago the life of the rict boards was extended from 3 to 4 years and on that analogy the of the union boards and that of the municipalities were extended 3 to 4 years. The life of the Calcutta Corporation, the biggest governing institution in this province, is at present only 3 years: e is no reason whatsoever why the life of the district boards should years on the analogy of the legislature under the new Government ndia Act. There is nothing common between the legislature and district boards, in spite of all that has been said by my friend the Bahadur in support of that theory. Local board areas are quite ted, whereas the constituencies for the legislature will be quite e and the elections will be very costly. A large amount of public ey also will have to be spent in the preparation of electoral rolls, ng booths, etc. So I find hardly any analogy between the elections egislature and elections of union boards and district boards. The was amended only 3 years ago and it has not been given a fair ; I see no justification for amending it further for extending the of the district boards by another year. I think the hon'ble mover accept my views and withdraw his motion.

Rai Bahadur SATYENDRA KUMAR DAS: Sir, may I be permitted to say a few words? I beg to differ from the views expressed by the Hon'ble Minister in charge of the Local Self-Government Department. My reason is this. As far as we can see from the proceedings of the Council, Government never oppose the introduction of any Bill to my knowledge at least, and Government at the initial stage always accepted the motion for the circulation of the Bill.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: May I rise on a point of order, Sir. We have not opposed the introduction of the Bill.

Rai Bahadur SATYENDRA KUMAR DAS: I am for the circulation of the Bill. With this object I would appeal to the Hon'ble Minister to accept the motion for circulation.

The amendment of Rai Bahadur Satya Kinkar Sahana was put and lost.

Rai Bahadur Jogesh Chandra Sen's motion that the Bill be taken into consideration was put and lost.

The Bengal Municipal (Amendment) Bill, 1935.

Rai Bahadur SATYENDRA KUMAR DAS: I beg to move for leave to introduce a Bill to amend the Bengal Municipal Act, 1932.

The motion was put and agreed to.

The Secretary then read the short title of the Bill.

Rai Bahadur SATYENDRA KUMAR DAS: I beg to move that the said Bill be referred to a Select Committee consisting of—

(1) The Hon'ble Minister in charge of the Local Self-Government Department,

(2) Mr. S. K. Haldar,

(3) Rai Bahadur Gris Chandra Sen,

(4) Maulvi Tamizuddin Khan,

(5) Khan Bahadur Nawabzada Khwaja Muhammad Afzal,

(6) Maulvi Abdul Ghani Chowdhury,

(7) Rai Bahadur Keshab Chandra Banerji,

(8) Mr. Ananda Mohan Poddar,

(9) Babu Khetter Mohan Ray,

(10) Babu Hem Chandra Roy Choudhuri,

(11) Mr. S. M. Bose,

(12) Mr. P. Banerji,

(13) Babu Jitendralal Bannerjee,

(14) Babu Jatindra Nath Basu,

(15) Mr. Sarat Kumar Roy, and

(16) the mover,

with instruction to submit their report by the 31st January, 1936, and that the number of members whose presence shall be necessary to constitute a quorum shall be five.

In this connection, I would say one word besides what I said in my Statement of Objects and Reasons. I introduce this Bill in order to give facilities to mufassal municipalities for better collection of taxes. In these days of economic depression without the collection of taxes no provision can be made for the better living of the people in the city. Taxes, as you know, are always unpleasant. Municipal taxes are not less unpleasant than other taxes. Though municipalities are necessary for the provision of amenities, without it people cannot live in the town; there are people on whom the burden sits heavily, but there are others who exercise their ingenuity in evading payment of their legitimate share of the city's expenses. Among this latter group the conduct of these people who come forward to protect the interest of the general body of ratepayers is certainly open to serious objection and particularly when they use the names of their parents to avoid payment. In the interest of the general body of ratepayers and on the principle that the protector should not be allowed to act as the aggressor, it should not be safe for any Municipal Commissioner to withhold payment of taxes by maintaining the names of their parents in the municipal assessment register.

I hope the House will accept this humble motion of mine and thereby remove the risk of an administrative anomaly which has crept into the Municipal Act already passed.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I beg to move that—

(*i*) for the personnel proposed, the following names be substituted, namely—

(1) Rai Bahadur Satyendra Kumar Das,

(2) Rai Bahadur Gris Chandra Sen,

(3) Khan Bahadur Muhammad Abdul Momin,

(4) Maulvi Tamizuddin Khan,

(5) Babu Khetter Mohan Ray,

(6) Mr. S. M. Bose,

(7) Mr. P. Banerji,

(8) Maulvi Abul Kasem,

(9) Mr. Narendra Kumar Basu,

(10) Mr. C. G. Cooper,

(11) Khan Bahadur Maulvi Emaduddin Ahmed,

(12) Babu Profulla Kumar Guha,

(13) Rai Bahadur Sarat Chandra Bal,

(14) Mr. S. K. Haldar, and

(15) The Minister in charge of the Local Self-Government Department; and

(ii) in the instruction for the figures and words "by the 31st January, 1936," the words "as early as possible" be substituted.

Rai Bahadur SATYENDRA KUMAR DAS: I accept the amendment, and I beg leave to withdraw my motion.

The motion as amended by the amendment of the Hon'ble Sir Bijoy Prasad Singh Roy was put and agreed to.

The Calcutta Municipal (Amendment) Bill, 1935.

MUNINDRA DEB RAI MAHASAI: Sir, I beg to move for leave to introduce a Bill further to amend the law relating to the municipal affairs of the town and suburbs of Calcutta.

The motion was put and agreed to.

The Secretary then read the short title of the Bill.

MUNINDRA DEB RAI MAHASAI: Sir, I beg to move that the said Bill be referred to a Select Committee consisting of—

(1) The Hon'ble Minister in charge of the Local Self-Government Department,

(2) Babu Jatindra Nath Basu,

(3) Seth Hunuman Prosad Poddar,

(4) Dr. Naresh Chandra Sen Gupta,

(5) Mr. P. Banerji,

(6) Mr. Shanti Shekhareswar Ray,

(7) Khan Bahadur Muhammad Abdul Momin,

(8) Maulvi Abdus Samad,

(9) Haji Badi Ahmed Chowdhury, and

(10) the mover,

with instruction to submit their report as soon as possible, and that the number of members whose presence shall be necessary to constitute a quorum shall be five.

Mr. President, Sir, before I proceed to explain the necessity of amendments of section 477 of the Calcutta Municipal Act, 1923, I would like to express my gratitude to His Excellency the Governor General for according me sanction to introduce this Bill.

Section 477 of the Calcutta Municipal Act, 1923, deals with some special powers of the Calcutta Corporation, such as planting of trees in public streets and public places, adornment of public halls, laying out and maintenance of squares, playing of music in squares, survey of lands, construction and maintenance of hospitals, infirmaries, almshouses, payment to these institutions, establishment and maintenance of veterinary hospitals, payment of contribution towards any public fund for the relief of human suffering within Calcutta, payment to charitable institutions for disposal of unclaimed corpses, promotion of technical and industrial education, payment to free libraries, payment to any fund for entertainment of any exhibition for the purpose of instruction or education, payment to Commissioners of any neighbouring municipality for expenditure on sanitary purposes and presentation of addresses to persons of distinction and finally for any other matter likely to promote the public health, safety or convenience or carrying out of the Calcutta Municipal Act, 1923, which the Local Government, on the recommendation of the Corporation made in pursuance of a resolution in favour of which not less than two-thirds of the Councillors and Aldermen present have voted, may declare in this behalf.

The present section 477 of the Calcutta Municipal Act consists of 18 clauses of which the last clause does not give any specific powers to the Corporation. My idea in introducing the present Bill is to add in this section some more clauses providing for some special powers which the Corporation, with the previous sanction of the Local Government, may exercise for the attainment of some of the objects already laid down in other sections of this Act.

I have proposed to add eleven clauses to section 477, the proposed first four, viz., clauses XII, XIII, XIV and XV, provide for maintenance and administration of a municipal bank, payment of contributions to the share capital, if any, or the reserve fund, of such bank, the guaranteeing of deposits in such bank on such terms and conditions as may be prescribed by the Local Government or of taking over of any existing bank subject to terms and conditions previously sanctioned by the Local Government. Sir, I need not dilate much on the necessity of more banking in India, specially in Bengal. The monetary resources of the country require to be fully utilized for the benefit of its people. A progressive country must have an advanced banking to cope with its

forward march of progress. The reports of the Provincial Enquiry Committeee and the Central Enquiry Committee on Indian Banking are unanimous on the recommendation that India—both rural and urban—requires more and more banking facilities. By the recent inauguaration of the Reserve Bank of India, the Government has demonstrated that in the sphere of banking, absolute co-operation is essential and possible irrespective of the politics of different classes and with the establishment of the Reserve Bank of India, this great country has entered a new epoch of sound banking for which each and every one of us should be hopeful of the country's future.

Sir, I have proposed that the Calcutta Corporation may be empowered to have a municipal bank on such terms and conditions as the Local Government may previously determine. It is a permissible clause and as such, regulations to determine the actual workings of such a municipal bank shall have to be framed and approved of by the Government. While speaking in connection with the establishment of a municipal bank in my city, I cannot but mention among others the name of the Birmingham Municipal Bank. This bank was originally started as a war measure on 29th September, 1916, and closed its business on 31st October, 1919, and during this period it attracted as many as 24,411 depositors. The bank had to be closed as the Municipal Savings Banks (War Loan Investment) Act, 1916, provided for the closing of the Birmingham Corporation Savings Bank within three months of the closing of the Great War. But citizens of Birmingham under the able leadership of the Right Hon'ble Neville Chamberlain were determined to have a municipal bank for their city and as a result the present Birmingham Municipal Bank came into existence on the 1st September, 1919, when the head office with seventeen branches were opened. This is Britain's first Municipal Savings Bank and its success was phenominal. The deposits of this bank are guaranteed by the Birmingham Corporation and it is a wonder of wonders that up till now that Corporation has not paid a single farthing from its coffers but, on the other hand, the Corporation has saved much of its expenditure in the matter of payment of interest for its borrowings. It is the romance of a great achievement which has attracted the notice of all municipal financiers all over the world. It has now 57 branches scattered over the city of Birmingham and its Housing Department is a great boon to the middle class people. The bank had a deposit of £746,984 on 40,130 accounts in 1920, but this has increased to £17,063,593 on 374,799 accounts in 1934. And the money collected for water accounts, dust-bin hire, electricity, gas and rate accounts, is working as a great convenience and economy both for the ratepayers, as well as for the Corporation. Thus, the Birmingham Municipal Bank has dispelled the doubts of the most pessimistic speculators about the municipal efficiency in the matter of running a bank.

Now to the affairs of the Calcutta Corporation: The Calcutta Municipality had an actual income during 1933-34 of Rs. 2,41,36,981 of which consolidated rate alone accounts for Rs. 1,84,89,418. To collect this huge amount of rate the Corporation had to maintain a big department under the Collector costing Rs. 2,87,087 or about 15½ per cent. of the rates. Then, again, taxes on profession came to Rs. 12,78,746 for which the department under the License Officer incurred a cost of Rs. 1,88,614 or about 14¾ per cent. of the income. I am confident that the expenses of these two departments, viz., Collection and License, will be materially curtailed as soon as there is a municipal bank in Calcutta, through the machinery of which a good deal of this collection business may be carried on. Besides, this bank may work as the Corporation's treasurer, thus dispensing with the necessity of the Treasurer's Department (cost Rs. 41,566), an economy which the Government is practising since the incorporation of the Imperial Bank of India in 1920. The Corporation maintains markets from which an income of Rs. 12,60,940 was derived and for which a cost of Rs. 4,40,020 was incurred during 1933-34, and I am very hopeful that a good portion of this expenditure may be economised if the facilities afforded by the bank is availed of in the matter of collecting rents, etc. The Corporation paid Rs. 30,362 as bank commission which undoubtedly would swell the profits of the future municipal bank of Calcutta. The Corporation paid Rs. 2,87,091 (1933-34)) to Employees' Provident Fund, the employees contributing an equal amount. This fund has now accumulated to about Rs. 85,00,000 all invested in Government and other gilt-edged securities; the amount this fund pays to the bankers for realization of periodical interest, etc., is substantial and the future municipal bank shall start with all these facilities and advantages. Without adding further to the advantages I have mentioned, I can safely say that inauguration of a municipal bank for the city of Calcutta will mean, besides many economies in Corporation finances, a real boon to the ratepayers of Calcutta inasmuch as it will help them to accumulate their savings for the benefit of their fellow ratepayers who may be requiring the bank's help in the matter of house building, etc. The Corporation shall have a distinct advantage in the matter of floatation of its debentures in future and as a result the ratepayers shall incur less by way of interest payable on the municipal debentures. When I say that the Corporation paid Rs. 42,54,853 on account of interest on its loans and Rs. 11,69,888 on account of contribution of sinking fund in 1933-34 the commitment of the city municipality may be well understood and the possibilities of the proposed municipal bank can be well visualized.

Sir, in the new clauses XVI and XVII I have provided for maintenance and administration of an Insurance Department. In these days of commercial advancement, even big commercial concerns insure the

lives of their own employees, as well as insure them against accidents. Is it too much to expect that the Calcutta Corporation will do well in insuring its own employees, who in this way shall have double protection as municipal employees without any additional risk on the city finances?

In the proposed clause XVIII, I have provided for the creation of a Reserve Fund for meeting the unforeseen expenses not provided for in the budget and to meet the deficit, if any, of income over expenditure in any year and to finance temporarily loan works, before the loan is raised. This is very necessary for the better working of the Corporation finances. Creation of a Reserve Fund for unforeseen demands on the resources of the Corporation or, as a matter of fact, on any financial organisation, is a necessity and the omission of this in the original Act of 1923 should now be rectified in the light of actual experience for the last eleven years.

The option of the Calcutta Corporation in the purchase of the Calcutta Tramways Company or as a matter of fact any other public utility concerns, can never be exercised unless there is a provision in the Calcutta Municipal Act empowering the Corporation to issue debentures secured only on the assets of the undertaking to be purchased by the Corporation and to rectify the defect I have provided the new clause XIX.

The Calcutta Corporation maintains a railway for removal of the refuse of the city and some amount of haulage of goods is also done. This railway can be utilized for bringing fish and vegetables from outside and also a number of passengers connected with this trade. Unless this is expressly provided in the Act, this cannot be done; so I propose to the Corporation to run a railway for purposes other than those for which it is at present utilized.

Lastly, I have proposed addition of the new clauses XXI and XXII empowering the Corporation to establish, maintain and administer bus and lorry services for passengers and goods and also maintenance and administration of the Fire Brigade. In the West we have municipal transport services, and they are not only successfully managed, but they bring revenue to the city treasury. Besides, these help efficient growth of the city, specially outlaying areas. Time may come when the Corporation may be in a position to undertake such a venture, and it is necessary to provide for it beforehand in the Act. The Calcutta Fire Brigade is now controlled and managed by the Police Department. The inauguration of the Reforms will bring additional strain on the Police Department and transfer of control of the Fire Brigade may be necessary. The Calcutta Corporation pays 86 per cent. and the Howrah Municipality 14 per cent. of the cost of the Calcutta Fire Brigade. During the year 1933-34 the Corporation of Calcutta alone paid

Rs. 3,55,288 for the maintenance of the Calcutta Fire Brigade. When the Fire Brigades in Western countries are managed by city municipalities, I do not find any reason why the Calcutta Corporation will not also do the same. It is in the fitness of things that the body or bodies who pay for the maintenance and upkeep of the Fire Brigade should have a controlling voice in its administration. I am quite hopeful that the Calcutta Fire Brigade shall be managed ably by the City Corporation if it is asked to undertake the responsibility. If the City Ambulance Brigade can be managed by the Corporation, there is no reason why the administration of the Calcutta Fire Brigade shall suffer inefficiency in the hands of trained men under the supervision of the Corporation.

Sir, in short, I have given you my ideas in connection with the introduction of this Bill, and I am sure I have made a good case to commend this Bill for your favourable consideration and for its reference to the Select Committee.

Rai Bahadur Dr. HARIDHAN DUTT: Sir, may I have your permission to say what I feel about this Bill at this early stage. I think that during his recent visit to Europe the Rai Mahasai has got very big and grandiloquent ideas, but he has forgotten that he has come back now from the Continent to his native place in Bengal. We are circumscribed by our circumstances and our surroundings and we must cut our coat according to the cloth at our disposal. There is none here to whom I yield in my enthusiasm for beautifying Calcutta, for improving the municipal administration and for seeing that the country of my birth—if I may say so—becomes the first city in India if not in the world. In spite of my whole-hearted enthusiasm for things which have been suggested by the mover of the Bill, I am sorry that I cannot see eye to eye with him. The Calcutta Corporation is already busy with a thousand things. Are they in a position to say that they have fulfilled all that was desired of them or was expected of them? Have they the energy to go on extending their usefulness in Calcutta by the addition of such things as banks, buses, electric supply corporation, gas company and what not? If I could subscribe to that feeling of the mover, I would have been glad to support him. But, reluctantly I must say that we have not reached that stage, and I am sure most of my friends will agree with me when I say that we have our limitations. Have we been able to utilise the special powers enumerated by my friend as portions of section 477 which have already been given by the legislature and Government to the Corporation? How many of the obligations have we been able to fulfil during the last 12 years—I leave aside the period before 1923? How many of the things which have devolved upon the Corporation as their primary duties they have been able to do satisfactorily? If they

had been able to do so, I would certainly have been the first person in demanding for more powers and more obligations. But are we in a position to do so? I would ask my friend to consider fairly what the actual situation is. It is no use being carried away by enthusiasm. Perhaps in some future time the Corporation may claim to have some of those powers. But, Sir, I cannot visualise the possibility of the Corporation taking up within the next 10 or 20 years the municipalisation of tramways, electric supply corporation and various other things. My friend spoke of municipal railway. It is an old gift of the Corporation. I remember that within the last 30 years when we had been in the Corporation all of us tried to do away with the existing railway. The mover now wants to add railways.

Sir, my friend, the Rai Mahasai, speaks of municipal insurance company being established. I have read casually what he has printed and circulated. He thinks that the insurance companies cannot lose. But next we are told that from the revenues of the Corporation the working expenses of the insurance company will be met. I cannot reconcile this. Various other things have been suggested which I do not think it is worth while to go into. Personally I feel that it is mere waste of time. I understand that Government cannot support a proposal like this and, without the support of Government, there is not the ghost of a chance of this House agreeing to this proposal. Circulation of this Bill would have been the proper course and my friend would have then been informed of the opinions of the public, what the people think about the potentialities of the Corporation, and whether the capabilities of the Corporation are quite adequate to undertake these responsibilities. Then and then only somebody might have been employed to frame a Bill for the consideration of the House. At the present moment I do not think any useful purpose would be served by discussing this matter. Sir, that is what I feel in this matter.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Sir, like the previous speaker, I appreciate the mover's enthusiasm for the improvement of the Corporation of Calcutta. I also agree with him that there should be more banking facilities in the towns and villagers of Bengal. But before the mover meddles with the Calcutta Corporation, I would advise him to start a bank in his own town of Bansberia and see how it works there; before he ventures into ambitious schemes like the establishment of banks by the Calcutta Corporation, he should try the experiment in his own municipality. Like my friend, Rai Bahadur Dr. Haridhan Dutt, every one of us who have to live in Calcutta and also those who do not live here but have to come here, naturally like to beautify the city of Calcutta, improve its amenities, civic as well as economic, but the way in which this has been sought to be made is not the proper way. As a matter of fact it is because we are anxious that the

Corporation should do its duties properly that we are opposed to imposing more work on the Corporation. Sir, according to the mover, the Corporation ought to, in addition to running a bank, do insurance work or to take up the electric supply and run buses and do various other things. Perhaps, he will say that the Corporation ought to run a miscellaneous stores, supply milk and vegetables and everything. But perhaps the only thing he does not want is that the Corporation should do its legitimate duties properly and well. Those who are connected with the Calcutta Corporation know very well how these duties are done. If we have a bank run by the Calcutta Corporation, perhaps in the very near future it will also be captured by some one or other of the political parties—I am speaking frankly and openly—and they will run it for the benefit of a particular section at the cost of the general taxpayers.. I am certainly very much opposed to any more duties than the Corporation is able to do being imposed on that body. If my frank opinion be taken, I would take away a lot of the powers at present given to the Corporation of Calcutta. Sir, with these words I strongly oppose the motion.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Sir, I rise to oppose this motion. We do not amend any Act in anticipation of a situation that may arise, but we amend only to meet the situation which has already arisen or is likely to arise in the near future. Like my friend Rai Bahadur Dr. Dutt I yield to no one in my anxiety to see that the Corporation is invested with adequate powers. Only responsibilities which the Corporation will be in a position to discharge should be placed on it. It is no use placing responsibilities on the Corporation or any local body which they will not be in a position to discharge. That would merely embarrass them.

Sir, the proposals of Munindra Deb Rai Mahasai I may describe as fantastic. The Corporation has many responsible duties to perform, and as it is I should say they are finding it rather difficult to discharge them to the full, and I would not saddle the Corporation with further responsibilites or duties.

Sir, some of the proposals are to allow the Corporation to run municipal railways, to allow the Corporation to start insurance companies and to empower the Corporation to start banks. Evidently, there are risks, and I am sure the ratepayers of Calcutta will not like the revenues of the Corporation being exposed to such risks in any way. The Corporation have got many useful functions to perform, functions which will add to the amenities of the city, and the revenues of the Corporation should be spent in discharging the duties that have already been cast on that body. Government are reluctant at present in placing further responsibilities on the Corporation. With these observations, Sir, I oppose the motion.

Mr. P. BANERJI: Sir, I rise to support the motion moved by my friend Munindra Deb Rai Mahasai. There has been opposition from both ex-Chairman of the Corporation and also the leader of the Proja Party as well as from the Government. I do not know whether these gentlemen know the present state of affairs in the country. Every day new banks are opened in almost every street of Calcutta. Now these banks have been started by even people of very small means and from past experience of banking in India we know that there are many banks that have sprung up like so many mushrooms. Now, Sir, Government, we know, is trying to make a lot of changes in the Companies Act and also the Insurance Act and perhaps the Ministers may want to start their own banks under Government protection. I do not know how this can be logical. If a bank is started, there are a thousand and one things that ought to be thought of. That does not matter. But if this question be referred to a Select Committee, the whole question may be threshed out and the members can reject it partially or insert a new clause suiting the convenience of the members who know the situation. Now if Government start a bank, the people have a lot of confidence in the Government and they invest their money in it even though they may get no interest. So in the same way if the Corporation start banks in the different wards, people will be able to deposit their money and at the same time it will be easy for the Corporation also to run the administration properly because the Corporation like the Government can always issue debentures. Now municipal debentures, even though they are backed by Government, often fall in value and the Corporation has to pay a high rate of interest when they need money. If the banks are started by the Corporation, the people's money will be saved and at the same time banking interest will thrive in Calcutta because there is no chance of these banks being misused by the Corporation. Therefore, I cannot accept the arguments advanced against this measure that banking institutions started by the Calcutta Corporation will have a very bad effect on the people. With these words I support the motion.

Mr. SHANTI SHEKHARESWAR RAY: I rise to support the motion moved by Rai Mahashai. Sir, there has been a certain amount of opposition to his proposal. It seems that he is a bit premature in putting forward this motion in this Council. I shall not deal with those speakers who have expressed surprise at his audacity in bringing forward such proposals before this Council. I shall confine myself to the remarks of one speaker alone, that is, the remarks made by Khan Bahadur Abdul Momin. He is against giving further powers to the Corporation of Calcutta, because he apprehends that these powers will be misused. He happens to be a member of that body, and a remark of this nature from him deserves consideration. After giving the remark full consideration, I have come to the conclusion that it is a remark

from a disappointed man. Sir, to make the charge that if you invest the Corporation of Calcutta with additional powers, the Corporation will misuse them, is simply absurd. It is a great institution (A VOICE: It was a great institution) and I think only the Khan Bahadur and men of his way of thinking consider that the Corporation of Calcutta misuse the power they have got. He is apprehensive that if the power to start a bank is given to the Corporation of Calcutta a certain party that controls the Corporation of Calcutta will misuse the funds——

Khan Bahadur MUHAMMAD ABDUL MOMIN: I did not say that.

Mr. SHANTI SHEKHARESWAR RAY: What authority has he got to make——

Khan Bahadur MUHAMMAD ABDUL MOMIN: I did not say, "misuse the capital of the bank." It may mean the same thing, but I did not say so.

Mr. SHANTI SHEKHARESWAR RAY: The Corporation will use the funds for their own party purposes. (A VOICE: He did not say that.) Nobody has up to this time made such an insinuation against the Calcutta Corporation that the Corporation misuses their power. For instance, in the disposal of their patronage, they do not make a distinction between British and non-British firms (A VOICE: Of course, they do), in spite of a remark from a member of the European Group, they have never done so; they have always upheld a correct attitude. When we hear remarks of this nature from a man of the position of Khan Bahadur Abdul Momin, an accredited leader of his own community, we have to hang our heads in shame. He is apprehensive of such conduct on the part of the Corporation. That is a most damaging admission and would be used against the extension of any power to the people of this country. If in the management of affairs of a body like the Calcutta Corporation, if the representatives of the people, our own representatives cannot uphold their ideals, it could hardly be expected that we should be able to do fairly and honourably towards all interests. I hope the suggestion made by my friend Munindra Deb Rai Mahasai will be taken in a proper spirit; instead of discouraging him, he should be given proper encouragement.

Maulvi ABUL QUASEM: I rise to oppose with all the emphasis I can command the motion of my friend Rai Mahasai. Mr. Shanti Shekhareswar Ray criticised Khan Bahadur Momin on account of certain remarks which fell from him. I assert that every remark that was made by Khan Bahadur Momin is justified by uncontrovertible facts. (A VOICE: What are the facts?) Wait a bit, I am coming to them. The Corporation of Calcutta is a politics-ridden Corporation. I say this

without any fear of contradiction. Politics take more of their time than the civic administration of the town of which they are—

Mr. PRESIDENT: I think that was merely a side issue. No discussion on that is necessary for our present purpose.

Maulvi ABUL QUASEM: Coming to the motion, I would say that additional powers have been suggested to be conferred upon the Corporation. My view as a close student of the proceedings of the meetings of the Calcutta Corporation as reported in the daily press is that the Corporation assemble more often to adjourn than to transact business.

Dr. AMULYA RATAN GHOSE: On a point of order, Sir. Are we discussing the conduct of the Calcutta Corporation?

Maulvi ABUL QUASEM: We are discussing whether they are fit to be given further powers or not.

Mr. PRESIDENT: You need not go into any further details.

Maulvi ABUL QUASEM: Only the other day, Sir, a great Indian statesman, the Right Hon'ble Mr. V. S. Srinivasa Shastri, in a memorable speech declared that local bodies and municipal bodies in India should divest themselves of politics.

Mr. PRESIDENT: You are again going into details.

Maulvi ABUL QUASEM: I cannot come to the point if I am interrupted.

Mr. PRESIDENT: Interruption is not the word which you should use when the President intervenes. I have already ruled that you cannot go into details and you must abide by that ruling.

Maulvi ABUL QUASEM: Many people complain that the business with which the Calcutta Corporation is charged is not being regularly done, that business has fallen into arrears and has accumulated on their hands.

Mr. PRESIDENT: Order, order. I have already made it abundantly clear to you that you cannot take up matters in detail. Please discuss the merits of the proposal now before the House. Certain words escaped from the lips of Khan Bahadur Abdul Momin and Mr. Shanti Shekhareswar Ray was allowed to reply to them. The matter should rest there. We should be able to discuss the real issues now before us dispassionately and without any heat.

Maulvi ABUL QUASEM: If I am to be interrupted like this, how am I——

Mr. PRESIDENT: Order, order. You cannot forget that I am here to see that the debate is carried on on proper lines.

Maulvi ABUL QUASEM: All right. A proposal has been made that a municipal bank should be established in Calcutta. A suggestion was made that the bank might be captured by the political party. My point is this, Sir: The House has accepted the principle of surcharge by passing the last Calcutta Municipal Amendment Act. The Calcutta Corporation was not evidently dealing with its funds in the way they should. Therefore, this Council introduced the principle of surcharge into the Calcutta Municipal Act. The supporters of this motion should take a note of this fact that only the other day the Corporation of Calcutta was rebuked by the Council for the mismanagement and misapplication of its funds. I think that as it has been recently recognised by this House that the Corporation has definitely mismanaged its own affairs, it is not right and proper that you should ask the Council to agree to the establishment and management of banking business by the Corporation.

Then the question of the management of the Calcutta Fire Brigade being made over to the Corporation has been raised by the Rai Mahasai. For the same reasons and in view of the fact that the Calcutta Corporation has enough work on its hands for the time being, it should be left to deal only with its present work. There will be enough time in the future to consider a proposal like that, when the Corporation has proved that it has mended its behaviour and is able to shoulder further responsibility. In my humble opinion that time is yet far distant, and this is certainly no time to consider a proposition like the present one. I oppose the motion.

MUNINDRA DEB RAI MAHASAI: Sir, whenever any Bill concerning the Calcutta Corporation is introduced in this Council, my esteemed friend Rai Bahadur Dr. Haridhan Dutt, its ex-Chairman, is in the habit of opposing it. I am sorry I am, therefore, unable to attach as much value as I should have done. My friend Mr. Shanti Shekhareswar Ray has very ably dealt with the points raised by Khan Bahadur Abdul Momin. He had left only one point for me to answer. He has asked me to make an experiment by opening a bank in my municipality. Yes, I have opened a co-operative bank in my town some years ago where some of the residents find it convenient to deposit money instead of going to the post office savings bank. It is running at a profit and is able to pay the maximum dividend of 12½ per cent. per annum as allowed by law.

The Hon'ble Minister has been pleased to characterise my proposals as "fantastic." I cannot expect better things from men of his way

of thinking. I should ask him to banish from his mind the present municipal board which have incurred his displeasure and look at things from a higher angle of vision. However, I am optimistic enough to think that sooner or later my reasonable proposals are bound to succeed.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I regret very much the introduction of heat in this debate. Government in opposing this motion were actuated purely by a spirit of caution. If we err let us err on the side of caution; that is the principle which Government want to follow with regard to every step and every legislation they undertake.

Dr. AMULYA RATAN GHOSE: On a point of order, Sir. Is the Hon'ble Minister in order in speaking on the motion twice?

Mr. PRESIDENT: Absolutely in order.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Rai Mahasai has said that his proposals are bound to materialise. I hope they will, but not in the immediate future but probably in the far distant future. If they do materialise in the distant future, nobody will have any objection, but at present we find not much justification for such proposals. Government oppose this Bill, not on political grounds, but merely on administrative grounds, and in the financial interests of the rate-payer of Calcutta. That is the sole motive and object of Government in opposing this Bill.

The motion that the Bill be referred to a Select Committee was put and lost.

The Bengal Medical (Amendment) Bill, 1935.

Mr. MUKUNDA BEHARY MULLICK: Sir, I beg to move for leave to introduce a Bill further to amend the Bengal Medical Act, VI of 1914.

The motion was put and agreed to.

The Secretary then read the short title of the Bill.

The Bengal Cruelty to Animals (Amendment) Bill, 1935.

Maulvi ABDUL HAKIM: I beg to move for leave to introduce a Bill further to amend the Bengal Cruelty to Animals Act, 1920.

The motion was put and agreed to.

The Secretary read the short title of the Bill.

Maulvi ABDUL HAKIM: I beg to move that the Bengal Cruelty to Animals (Amendment) Bill, 1935, be taken into consideration.

Sir, my Statement of Objects and Reasons is very exhaustive. As some members may not have read it, I want to read some important passages from it for their understanding.

Mr. PRESIDENT: You may assume that they have read it.

Maulvi ABDUL HAKIM: In my Statement of Objects and Reasons I have said that the custom of *satidaha* was prevalent in India, and I want to explain now what *satidaha* is and how this long standing inhuman custom was abolished.

Mr. PRESIDENT: I should like you to be first kind to yourself and to us. There must be a line of distinction between human beings and animals. (Laughter.)

Maulvi ABDUL HAKIM: I want to bring in that thing for developing my point by an example.

Mr. PRESIDENT: You will be making the most serious mistake of your life if you will do so.

Maulvi ABDUL HAKIM: Sir, man is called the lord of creation. It is said that he is created after the image of God and is endowed with conscience by which he can distinguish between right and wrong. As a claim of his lordship over all created beings, a man must not only inculcate truth, purity and honesty but also above all, kindness or benevolence towards all created beings. A dishonest and a cruel man is not better than a quadruped. Someone may say when the very killing of this or any other animal is considered an act of dire cruelty, then why should we not stop animal sacrifice altogether? My answer to him is that as long as we shall pursure a religion, or more correctly speaking, as long as we the members of this Council are either Hindus or Mussalmans or Christians, we must follow our respective creeds and guide our actions accordingly. And I venture to say that the creed of each of these religions characterises such a method of killing the swine as most barbarous and inhuman. Had we all been Buddhists I might not and could not bring in a legislation in this fashion in this Council. In that case I might bring a legislation not only to put a stop to all sorts of torturing but also to put a stop to the very killing of any animal in our country.

I cannot but invite the special attention of the Christian Group of this Council in this matter. Swine is an animal whose flesh is allowable to them according to their creed and not allowable, as you all know, either to the Mussalmans or to the Hindus. For this reason the Christian Group should support my amendment more strongly than any other group here. Each community of mankind has got to uphold their

own religious rites and if you look into the section, you will clearly find that religion or religious rites are not at all interfered with by my amendment. And I affirm that it is not for interfering with the custom of killing but for the method of killing that I have brought this amendment. Section 7 of the Bengal Cruelty to Animals Act, 1920, runs thus: "If any person kills any animal in an unnecessarily cruel manner, he shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to six months, or with both." The House should remember the words "unnecessarily cruel manner." The proviso lays down "that nothing in this section shall render it an offence to kill an animal in a manner required by the religion or religious rites and usages of any race, sect, tribe or class, or for any *bona fide* scientific purpose or for the preparation of any medicinal drug." So if the words "and usages" are omitted, it will not interfere with the religion or religious rites of any community at all.

I do not know whether the Bengal Cruelty to Animals Act has been made applicable to the mufassal besides Calcutta. If it has not, the Act or at least this section, after my suggested amendment, may be made applicable to the mufassal, so that these wretched dumb animals may be saved from the unnecessary and prolonged tortures with which they are killed by certain sections of the articulate and sensible human beings who are also not only lords of creation but also profess to have kindness or benevolence to show towards all created beings.

Rai Bahadur SATYENDRA KUMAR DAS: Sir, I take my stand not to support the Bill, but to kill the Bill. I may be as cruel as to kill the Bill. The mover would have every support of every member of this House had he provided in this Bill against cruelty to all animals, but I cannot make out why he should take exception to the killing of swine only. Is he a great lover of swine or what. (Laughter.) There are other kinds of cruelty as well as cruelty to other animals, *e.g.*, *jabai*, slaughter, etc. He would have surely received sympathy from all other members of this House if he had provided in this Bill against other forms of cruelty which people can think of; there are also other acts of cruelty which ought to come within the purview of this Bill. I oppose the motion.

The Hon'ble Mr. R. N. REID: I think the House was a little unkind to the mover of this little Bill; because, after all, it is a clear proof of the hon'ble member's sensitiveness to the sufferings of dumb animals that he as a Mussalman has brought forward a Bill of this nature. I am, however, only going to state the position of Government as far as the Bill goes. Government have got to oppose it if only on this ground that the Bill as drawn up would, in the opinion of Government, be ineffective in achieving the object that the Maulvi Sahib

has in mind. He proposes to leave out two words in the proviso to section 7 of the Bengal Cruelty to Animals Act, 1920. Those two words are "and usage." The proviso says that "nothing in this section shall render it an offence to kill any animal in a manner required by the religion or religious rites and usages of any race, sect, tribe or class, or for any *bona fide* scientific purpose or for the preparation of any medicinal drug."

Well, now, the word "religious" qualifies the word "usage" as well as the word "rite," and if you leave out the words "and usage" it does not make the slightest difference. You are in this dilemma, therefore, that if the particular method of killing swine, to which the mover has drawn our attention, is not a matter for religious rite and usage, then it is not protected by the proviso to this Act. If, on the other hand, this method of killing swine is dictated by religious rites and usages, then those who adopt this method of killing swine will say that it is a matter of religion with them. And it seems to me that any Court, before whom the offender may be brought up, would find it extremely difficult to controvert those who claim that in acting as they did they were simply following the particular tenets of their religion. I had hoped, Sir, in this connection to have obtained the opinion of the hon'ble member from Midnapore North (non-Muhammadan) on this subject, but he has not been good enough to give us his advice, which might have been useful to us. However, Sir, I beg to oppose the motion.

Maulvi SYED MAJID BAKSH: Sir, what is the peculiar method of killing swine?

Mr. PRESIDENT: I know nothing about it: I am absolutely ignorant of it.

The Hon'ble Mr. R. N. REID: The Maulvi Sahib will know if he reads the Statement of Objects and Reasons.

The motion of Maulvi Abdul Hakim was put and lost.

The Bengal Medical (Amendment) Bill, 1935.

MUNINDRA DEB RAI MAHABAI: Sir, I beg to move for leave to introduce a Bill further to amend the Bengal Medical Act, VI of 1914.

The motion was put and agreed to.

The Secretary then read the short title of the Bill.

Adjournment.

The Council was then adjourned till 2 p.m. on Friday, the 13th December, 1935, at the Council House, Calcutta.

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